EXEMPTION FROM TAXATION IN MASSACHUSETTS

THE CONSTITUTION:

"It shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; . . . ."

Constitution of Massachusetts, chap. 5, sect. 2.

THE STATUTE:

The following property and polls shall be exempted from taxation.

* * * * * * * * * * * *

Third, The personal property of literary, benovelent, charitable and scientific institutions and of temperance societies incorporated within this commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one.

Revised Laws 1902, Chap. 12, Sect. 5, cl. 3.

THE COURT:

"The statute is not to be construed narrowly but in a fair and liberal sense and so as to promote that spirit of learning, charity, and benevolence, which it has always been one of the fundamental objects of the people of this State to encourage."

175 Mass. 125.

EXEMPTION FROM TAXATION

Addresses, Reports, Judicial Proceedings, Legislative Bills, Acts and other Documents relating to the Exemption of Massachusetts Colleges and Universities from Taxation

BOSTON
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1910

Jerome F. Greene

PREFACE

The proposals made in 1907 to restrict the right of Massachusetts colleges and universities to exemption from taxation brought about concerted action on the part of these institutions, to inform both the Legislature and the public of the fundamental principles justifying the statutory exemption. The issue being squarely defined, after the fullest public discussion, the House of Representatives decided by a vote of 142 to 14 that not even the most moderate reduction of the right to exemption would be tolerated by the Commonwealth of Massachusetts.

This gratifying outcome of the appeal to public opinion made by the colleges and universities of the state in 1907 suggested to the executive committee having their interests in charge that it would be wise to compile for ready reference the addresses, reports and documents bearing on the question of exemption in Massachusetts. The committee hope that this compilation will help to remove such misapprehension as may appear from time to time in different parts of the state regarding both the principle of exemption and its effect upon the communities in which it occurs.

The educational institutions of Massachusetts enjoying freedom from taxation on the ground of their performance of a public service, must always court the fullest investigation into the efficiency and good faith with which they perform that service. Their right to exemption can be kept alive only by continuous service. Periodic inquiries on this subject, instead of being resented should be welcomed as providing an opportunity to make the educational resources of the state better known and more justly appreciated. On the other hand, when the object in view is to let the public and the Legislature know the history of exemption, the arguments justifying it, and its practical effects, the laborious search for data already available, and the reinvestigation of subjects already exhaustively investigated and fully reported upon entail a large waste of time and money. It is there-

fore with a view to economy and efficiency in bringing the results of former legislation and discussion before the people of the state that the present volume is issued. A similar service has just been rendered by the Tax Commissioner's report (1910 House No. 1395) in which the results of previous investigations and judicial proceedings have been admirably summarized.

JEROME D. GREENE,

On behalf of the Executive Committee of the Coöperating Colleges and Universities.

April 15, 1910.

CONTENTS.

THE EXEMPTION FROM TAXATION OF THE PROPERTY OF INSTITUTIONS OF HIGHER EDUCATION IN MASSACHUSETTS.

HISTORICAL STATEMENT.

From the earliest times the personal property of literary institutions and the real estate of such institutions actually occupied by them for literary purposes have been exempt from taxation. This exemption appears in the Revised Statutes of Massachusetts, 1836, chap. 7, sect. 5, cl. 2, as follows: "The following property and polls shall be exempted from taxation, namely:.....The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this Commonwealth, and such real estate belonging to such institutions, as shall actually be occupied by them, or by the officers of said institutions, for the purposes for which they were incorporated." It is set forth in practically the same form in the General Statutes, 1860, chap. 11, sect. 5, cl. 3; (p. 249).

In 1874 a bill was proposed in the Legislature to tax the property of musical, agricultural and educational associations, other than colleges and town schools theretofore exempted from taxation. (p. 256.) This was accompanied by a petition of some 1150 citizens, and a petition of the Executive Committee of the Boston Liberal League. The Committee of the Legislature on Just and Equal Taxation recommended, May 28, 1874, the appointment of a commission to make an inquiry and investigation in regard to laws relating to taxation and exemptions therefrom, and to make a full report to the next General Court. (p. 255.)

By a resolve of the General Court, approved June 18, 1874, such a commission with powers as recommended was appointed, con-

sisting of three members. This Commission, by a vote of two to one, recommended that no change be made in the exemption of educational institutions from taxation. (p. 49.)

Shortly after this report two statutes affecting the exemption were passed and were later embodied in Public Statutes, 1882, chap. 11, sect. 5, cl. 3. (p. 250.) The first of these statutes, Acts of 1874, chap. 375, sect. 8, enacted that no real or personal property of literary corporations should be exempt, if any part of the income or profits thereof was to be divided among the members or stockholders or was to be used for other than literary purposes. (p. 249.) The second of these statutes, Acts of 1878, chap. 214, required that, when such an institution purchased real estate, the exemption should not apply thereto prior to actual occupation for a longer period than two years. (p. 250.)

Acts of 1882, chap. 217, sects. 1 and 2, provided that all persons and corporations who held property for literary, benevolent, charitable or scientific purposes should bring in to the assessors true lists of all such real and personal estate before the first of July in any year; and that if any person or corporation wilfully should omit to bring in such list the estate so held should not be exempt from taxation. (p. 250.)

Acts of 1886, chap. 231, extended the exemption to the property of temperance societies. Acts of 1888, chap. 158, slightly changed the language of the third paragraph of section five of chapter eleven of the Public Statutes as amended by chapter two hundred and thirty-one of the Acts of eighteen hundred and eighty-six, without however making any material alteration therein. (p. 251.)

The exemption in final form appears in Revised Laws, 1902, chap. 12, sect. 5, cl. 3, as follows: "The following property and tolls shall be exempted from taxation":.....Third, The personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated within this commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such

purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one."

The last Legislative enactment in Massachusetts substantially affecting the exemption from taxation of property devoted to literary uses is Acts of 1888, chap. 158. Since that act, however, the exemption has been vigorously discussed; and a number of bills attacking it have been introduced in the Legislature. In order, however, to understand thoroughly the subsequent history of the subject, it will be necessary to examine to some extent the course of litigation in Massachusetts involving this class of legislation. The form of the statutes granting the exemption has from the earliest times left an opening for dispute. It will be remembered that no real estate belonging to literary institutions is exempt unless it is occupied by such institutions or by their officers for the purposes for which they were incorporated. For more than half a century this limitation of the exemption has been the subject of occasional litigation.

In Pierce v. Cambridge, 2 Cush. 611 (1849), it was held by the Supreme Judicial Court of Massachusetts that the plaintiff, who was a professor at Harvard University, was obliged to pay taxes on a house belonging to the Corporation while he held that house under a lease, paying rent, inasmuch as the present estate was in him, and the Corporation only had a reversionary interest. On the other hand, in Wesleyan Academy v. Wilbraham, 99 Mass. 599 (1868), the same court held that a farm and stock thereon owned by an exempted educational institution, which were used solely to raise produce and to do teaming work for a boarding house kept by the institution to supply board to the students at cost, were exempt. In the following year in Massachusetts General Hospital v. Somerville, 101 Mass. 319, a case closely allied to those dealing with exemptions of literary institutions, it was held that

payment of rent to a corporation by an individual was not conclusive evidence that the relation between them was not that of master and servant; and, accordingly, if a workman solely by reason of his service occupied an old wooden building on untaxed land owned by a hospital, if he was exclusively employed by the corporation, and if from his wages the superintendent deducted a sum of rent, that building was exempt from taxation. In 1887 the Mt. Hermon Boys' School which owned a large farm with buildings thereon was involved in litigation in regard to this property through the attempt of the town to tax it. It appeared that in addition to attending school the scholars were required to work on the farm and were taught agriculture. The products in large measure were consumed in furnishing food for the scholars, although some of them were sold and the proceeds applied to school uses. The exceptions of the School to an adverse decision in the Court below were sustained; and the Supreme Court held that the use of the farm and of its products was so closely allied to the objects of the School that the farm could be said to be occupied for the purpose for which the institution was incorporated. Mt. Hermon Boy's School v. Gill, 145 Mass. 139 (1887).

Ten years later the municipalities attacked the colleges from a different quarter. In Williamstown, Williams College owned a number of dwelling houses which were occupied as residences by persons engaged solely in instruction and government under parol agreements, whereby each officer enjoyed the use of the estate and received a monthly salary from which a certain sum was deducted for the purposes of rent. No further evidence appeared as to the character of the occupation; and it was held that these dwelling houses were not exempt, inasmuch as they were occupied for strictly private purposes. Williams College v. Williamstown, 167 Mass. 505 (1897). This case was followed in Amherst College v. Amherst, 173 Mass. 232 (1899).

Shortly after the decision in the Williams College case, the City of Cambridge assessed a tax for the year 1897 on property of Harvard University consisting of a house and lot devoted to the purposes of a dining hall for students, and on several houses and

lots occupied by the President and certain professors. The food at the dining hall was supplied to the students at cost through the medium of a club of their own organization. The houses occupied by the President and by the professors, who were, with one exception, administrative officers as well, were used to some extent for college business, partly for the convenience of the College and partly for the convenience of the occupant. These private dwelling houses were cared for in part by the College; and the salary of each occupant was fixed annually at a certain sum "and the use of a house." The case was submitted to a Justice of the Superior Court on an agreed statement of facts. He decided that the several properties were exempt from taxation, and by consent of the parties reported the case to the Supreme Judicial Court. In 1900 the Court rendered its decision, affirming the decision of the Superior Court, and at the same time handed down an opinion in Phillips Academy v. Andover, which had been argued shortly before the Harvard College case, and involved the same legal principles. Mr. Justice Morton, who delivered the opinions of the Court in both cases, had little difficulty in holding that property occupied for the purpose of providing college students wholesome food at cost was property occupied for the purposes for which the College was incorporated. In regard to property occupied by the President and the professors he distinguished the case of Williams College v. Williamstown by saying that the difference lay between an occupancy for the private benefit and convenience of the officer, as in the ordinary case of landlord and tenant, and an occupancy where, although the relation of landlord and tenant existed, the principal consideration was the effect of the occupancy in promoting the objects of the institution in the various ways in which such occupancy may tend to promote them. In the case of the properties presented by Harvard College and Phillips Academy cases the occupancy was of the latter character, and, therefore, the properties were exempt. Phillips Academy v. Andover, 175 Mass. 118; Harvard College v. Cambridge, 175 Mass. 145; (for a full report of the briefs and opinions see p. 179).

Meanwhile, under a resolve approved June 4, 1896, a second

commission, this time of five persons, was appointed to inquire into the expediency of revising and amending the laws relating to taxation. On October 1, 1897, this Commission reported by a majority of four to one that no change in the existing legislation regarding the exemption of educational institutions from taxation should be made. The recommendation of the minority was that the Commonwealth should reimburse the cities and towns in which colleges or universities were situated for the so-called burden imposed upon them by the withdrawal from taxation of the land occupied by those institutions. (p. 65.)

Soon after, Williams College endeavored to obtain through the Legislature what they had been deprived of by the courts. The President and Trustees of the College petitioned that the real estate of an educational institution should be exempt from taxation whenever the occupation thereof by an officer of instruction, administration, or government of such institution is in whole or in part the compensation of such officer. This petition was presented to the Legislature of 1897 with a Senate bill (p. 258). This question, however, was left to the next General Court. A similar bill, Senate No. 131, was accordingly introduced in the year 1898 (p. 258). This bill was referred by the Senate to the House, and was then sent to the Committee on Taxation. 1898 House Journal, p. 79. The city solicitor of Cambridge argued before that Committee against this bill on March 25, 1898.

On April 25, 1898, the Committee on Taxation reported a bill and a resolve. The bill, House No. 1330, included the substance of Senate No. 131, and added that the exemption should extend to halls, dormitories, and other buildings which might be occupied for the purposes for which the institution was incorporated. (p. 259.) The resolve, House No. 1331, recommended the appointment of a Commission to report upon the relation of the exemption of educational property to local and general taxation. (p. 259.) The House refused to order the bill, 87 to 44, and the resolve to a third reading. 1898, House Journal, 1009.

In 1899 two bills were introduced in the House. One provided that the property of literary and scientific institutions should only

be exempt from state taxes. The other bill subjected the property of educational institutions to taxation in the same manner as other property, excepting such real and personal estate as is actually used for instruction or education. It then went on to enumerate certain classes of real estate which should be exempt. The Committee on Taxation reported leave to withdraw these two bills; the report was accepted in the House and sent up for concurrence, 1899, House Journal, 441. The report was accepted in concurrence in the Senate. 1899, Senate Journal, 381.

In 1900 a bill was introduced in the House proposing that the amount of real estate belonging to literary and scientific institutions hitherto exempted from taxation should be assessed, and that the amount of the tax thereon should be credited and paid out of the treasury of the Commonwealth to the towns in which the institutions were situated. The Committee on Taxation reported to the Senate leave to withdraw. This report was accepted, and sent down for concurrence. 1900, Senate Journal, 487. It was considered in the House; and there was a motion to amend by the substitution of a bill, but this motion was lost by a vote of 51 yeas to 128 nays. And so the report was accepted in concurrence. 1900, House Journal, p. 792–794. In 1906 further legislation was attempted in the Senate. A bill was introduced to remove the exemption from dormitories and dining halls. This bill was sent to the Committee on Taxation, and was then referred to the next General Court. This disposition of it, however, was reconsidered, and Senate No. 382 substituted. This bill, though less extensive in character, was directed in general towards the same subject matter. Finally this latter bill was referred to the next General Court. 1906, Senate Journal, pp. 838, 839, 845, 846, 872, 912. A special joint committee, consisting of four members of the Senate and eleven members of the House, was appointed to consider the expediency of amending the laws in reward to taxation. Senate No. 382 was referred to it; and it considered the question of college taxation in entirety. The Committee recommended, 14 to 1, that there be no change in the laws relating to the exemption from taxation of the property of educational institutions.

Meanwhile the exemption clause had been three times before the Courts. In Phi Beta Epsilon Corporation v. Boston, 182 Mass. 457 (1903) a club for students of the Massachusetts Institute of Technology sought to avoid the payment of taxes on its building which furnished board and lodging for students. The building was not owned by the Institute. The Court held that the club must pay taxes. In Emerson v. Milton Academy, 185 Mass. 414 (1904), houses occupied by teachers and their families for the purposes of discipline, land for athletic fields, and vacant land for use of the pupils, all owned by the Academy, were held exempt from taxation. The previous cases were cited with approval, and their principles applied in Amherst College v. Amherst, 193 Mass. 168 (1906). There the President's house, the athletic field, a professor's house, and a grove used by the students for recreation, all owned by the College, were held exempt from taxation; while other property let to an individual not in the employ of the institution, and a barn used by the President for storage purposes were held taxable, although college property.

In 1907 a vigorous attack was made on the exemption by its opponents. Five bills were introduced in the Senate by them. Two of these bills required that an amount of money equal to the taxes that would have been due from the real estate of educational institutions were it not for the exemption, should be paid by the Commonwealth to the municipalities in which they were situated. Another provided that half the sum so estimated should be paid by the Commonwealth. A fourth withheld the exemption from real property used for residential or commercial purposes or for dormitories; and a fifth, Senate Bill No. 290, subjected the residences of officers of instruction, administration, or government to taxation. (pp. 264–268.) These bills were referred by the Senate to the Committee on Taxation and were sent down from that Committee for concurrence. 1907, Senate Journal, p. 590. Of these, Senate Bill No. 290 was selected to go before the Senate. By a vote of 23 to 13 the bill was amended by adding at the end of Section 1 thereof the words "provided that nothing herein contained shall subject to taxation any building otherwise exempt of

which less than one-half in extent and value is occupied for any residential use or purpose by such officer or officers; and provided, further, that in no event shall more than the portion of any building so occupied or a sum equal in value to such portion be taxed against the owner of said building under the provisions of this Act." This Bill as amended passed the Senate by a vote of 17 to 11. 1907, Senate Journal, pp. 699–701. The action of the Senate called forth the unanimous protest of all the universities, colleges, and scientific institutions in the Commonwealth. On April 17, 1907, their representatives met and appointed a Committee which drew up and sent to the Senate and the House of Representatives an emphatic remonstrance against this legislation. (p. 129.) The bill was overwhelmingly defeated in the House by a vote of 142 to 14. 1907, House Journal, p. 891, 892.

A third Commission on Taxation was recommended by the Committee on Taxation in May, 1907. This recommendation was approved in June and a Commission of nine members appointed; two to be appointed from the Senate by the president of the Senate, four to be appointed from the House of Representatives by the speaker of the House, and three, experts on taxation, to be appointed by the Governor. This Committee unanimously reported in January, 1908, against modifying the exemption enjoyed by educational institutions.

In 1908 two bills directed against the exemption were introduced in the House. One contemplated taxing the real estate thereafter acquired by Harvard University; the other, the payment by the Commonwealth to the municipality of one half the taxes that would have been assessed on the real estate of an educational institution were it not for the exemption. (pp. 268–269.) These bills were referred to the Committee on Taxation, which reported on both leave to withdraw. 1908, House Journal, p. 711. These reports were later considered by the House; and it was moved that the report on the second bill be amended by the substitution of a bill providing that land and buildings thereon hereafter acquired by any institution having authority to grant degrees shall not be exempt from taxation, provided they are used for such

purposes of the institution as may be productive of income. This amendment was rejected by a vote of 59 to 10; and the report was accepted. The report of the Committee on the bill in regard to Harvard University was also accepted. 1908, House Journal, p. 886. Shortly afterwards a motion to reconsider the latter vote was adopted by the House. It was then moved that the report be amended; but after further debate the amendment was rejected by a vote of 47 to 31, and the report was accepted.

At the end of the same session the House rejected by a vote of 19 to 10 an order directing the Tax Commissioner to furnish to the next General Court, not later than the fifteenth day of January, a schedule of all property in the Commonwealth owned by universities and colleges, upon which no taxes are paid or which is exempt from taxation under the laws of this Commonwealth. 1908, House Journal, 1172.

In 1909 two bills were introduced and referred to the Committee on Taxation; one proposed to divide between the institution, the town and the state the assessment on property of colleges and universities now exempt; the other to tax all real estate hereafter acquired by Harvard University. (p. 270.) 1909, Senate Journal, p. 76. 1909, House Journal, p. 74. The Committee reported a resolve, which was passed, to provide for an investigation by the Tax Commissioner of the exemption from taxation of the property of educational and public institutions. 1909, Senate Journal, pp. 722, 739, 754, 784. 1909, House Journal, pp. 677, 718, 841, 934.

The rejection of the two bills was recommended by the committee on taxation, and they were rejected in the House, April 8, 1910. 1910, House Journal, pp. 927, 928.

THE EXEMPTION FROM TAXATION OF CHURCH PROPERTY AND THE PROPERTY OF EDUCATIONAL AND CHARITABLE INSTITUTIONS.

BY CHARLES W. ELIOT,

President of Harvard College.

THE EXEMPTION FROM TAXATION OF CHURCH PROPERTY AND THE PROPERTY OF EDUCATIONAL AND CHARITABLE INSTITUTIONS.

BY CHARLES W. ELIOT,

President of Harvard College.

CAMBRIDGE, December 12, 1874.

To the Commissioners of the Commonwealth, appointed "to inquire into the expediency of revising and amending the laws of the State relating to taxation and the exemptions therefrom":—

GENTLEMEN:— In accordance with a request contained in a letter of October 14, 1874, from Prof. J. H. Seelye, that I lay before your Commission my "views respecting the present exemption from taxation of property used for religious, educational and charitable purposes," I respectfully present for your consideration the following paper.

Your obedient servant,

CHARLES W. ELIOT.

The property which has been set apart for religious, educational and charitable uses is not to be thought of or dealt with as if it were private property; for it is completely unavailable for all the ordinary purposes of property, so long as the trusts endure. It is like property of a city or state which is essential for carrying on the work of the city or state, and so cannot be reckoned among the public assets; it is irrecoverable and completely unproductive. The capital is sunk, so to speak, just as the cost of a sewer or a highway is capital sunk. There is a return, both from a church or a college, and from a sewer

or a highway, in the benefit secured to the community; but the money which built them is no longer to be counted as property, in the common sense. It can never again be productive, except for the purposes of the trust for which it was set apart.

When a new road is made where there was none, the State, or some individual, sacrifices the value of the land it covers, and the money spent in building the road. It also sacrifices the opportunity to tax, in the future, the improvements which might have been put upon that land if it had not been converted into a road, and all the indirect taxable benefits which might have been derived from the use for productive purposes of the land, and of the money which the road cost. When a church, or a college, or a hospital, buys land, and erects buildings thereon, the State does not sacrifice the value of the land, or the money spent upon the buildings; private persons make these sacrifices; but the State does sacrifice, by the exemption statute, the opportunity to tax, in the future, the improvements which might have been put upon that land if it had not been converted to religious, educational or charitable uses, and all the indirect taxable benefits which might have been derived from the use for productive purposes of the land, and of the money which the buildings cost.

This is the precise burden of the exemption upon the State. Why does the State assume it? For a reason similar to, though much stronger than, its reason for building a new road, and losing that area forever for taxation. The State believes that the new road will be such a convenience to the community that the indirect gain from making it will be greater than the direct and indirect loss. In the same way the State believes, or at least believed when the exemption statute was adopted, that the indirect gain to its treasury which results from the establishment of the exempted institutions is greater than the loss which the exemption involves. If this belief is correct in the main, though not perhaps universally and always, the exemption can hardly be properly described as a burden to the State at large.

The parallel between a sewer or a highway, on the one hand, and land and buildings of exempted institutions, on the other, may be carried a little farther with advantage. The abutters often pay a part of the cost of the sewer or the highway which passes their doors, because it is of more use to them than to the rest of the inhabitants, and the members of the religious, educational or charitable society erect their necessary buildings and pay for their land themselves. If

it be granted that the religious, educational or charitable use is a public use, like the use of a sewer or a highway, there is no more reason for taxing the church, the academy or the hospital, than for annually taxing the abutters on a sewer or a highway on the cost of that sewer or on the cost of the highway and its value considered as so many feet of land, worth, like the adjoining lots, so many dollars a foot. The community is repaid for the loss of the taxable capital sunk in the sewer by the benefit to the public health, and the resulting enhancement of the value of all its territory. In like manner, it is repaid for the loss of the capital set apart for religious, educational and charitable uses, by the increase of morality, spirituality, intelligence and virtue, and the general well-being which results therefrom. To tax lands, buildings, or funds which have been devoted to religious or educational purposes, would be to divert money from the highest public use,— the promotion of learning and virtue,— to some lower public use, like the maintenance of roads, prisons or courts, an operation which cannot be expedient until too large an amount of property has been devoted to the superior use. This is certainly not the case in Massachusetts to-day. The simple reasons for the exemption of churches, colleges and hospitals from taxation are these: first, that the State needs those institutions; and secondly, that experience has shown that by far the cheapest and best way in which the State can get them is to encourage benevolent and public-spirited people to provide them by promising not to divert to inferior public uses any part of the income of the money which these benefactors devote to this noblest public use. The statute which provides for the exemption is that promise.

Exemption from taxation is not then a form of State aid, in the usual sense of those words; it is an inducement or encouragement held out by the State to private persons, or private corporations, to establish or maintain institutions which are of benefit to the State. The answer to the question,— Why should the State give encouragement, in any form, to private corporations which support churches, academies, colleges, hospitals, asylums, and similar institutions of learning, advanced education and public charity,— involves, therefore, an exposition of the public usefulness of these corporations. I say advanced education, because the lower grades of education are already provided for at the public charge, and there seems to be little disposition to question the expediency and rightfulness of this provision.

The reason for treating these institutions in an exceptional manner is, that having no selfish object in view, or purpose of personal gain, they contribute to the welfare of the State. Their function is largely a public function; their work is done, primarily, indeed, for individuals, but ultimately for the public good. It is not enough to say of churches and colleges that they contribute to the welfare of a State; they are necessary to the existence of a free State. They form and mold the public character; and that public character is the foundation of everything which is precious in the State, including even its material prosperity. To develop noble human character is the end for which States themselves exist; and civil liberty is not a good in itself, but only a means to that good end. The work of churches and institutions of education is a direct work upon human character. The material prosperity of every improving community is a fruit of character; for it is energetic, honest and sensible men that make prosperous business, and not prosperous business that makes men. Who have built up the manufactures and trade of this bleak and sterile Massachusetts? A few men of singular sagacity, integrity and courage, backed by hundreds of thousands of men and women of common intelligence and honesty. The roots of the prosperity are in the intelligence, courage and honesty. Massachusetts to-day owes its mental and moral characteristics, and its wealth, to eight generations of people who have loved and cherished Church, School and College.

The public services of these institutions can hardly need to be enlarged upon. A single sentence may be given to the utility of that class of institutions which I may be supposed to speak for — the institutions of advanced education — the academies, colleges, scientific and technical schools, professional schools and seminaries, art collections and museums of natural history. All the professions called learned or scientific are fed by these institutions; the whole school system depends upon them, and could not be maintained in efficiency without them; they foster piety, art, literature and poetry; they gather in and preserve the intellectual capital of the race, and are the storehouses of the acquired knowledge on which invention and progress depend; they enlarge the boundaries of knowledge; they maintain the standards of honor, public duty and public spirit, and diffuse the refinement, culture and spirituality without which added wealth would only be added grossness and corruption.

Such is the absolute necessity of the public work which the institutions of religion, education and charity do, that if the work were not done by these private societies, the State would be compelled to carry it on through its own agents, and at its own charge. In all the civilized world, there are but two known ways of supporting the great institutions of religion, high education and public charity. The first and commonest way is by direct annual subsidies or appropriations by government; the second way is by means of endowments. These two methods may of course be combined. An endowment, in this sense, is property, once private, which has been consecrated forever to public uses. If, in one generation, a group of people subscribe to buy a piece of land, and build a church thereon, that church is an inalienable endowment for the benefit of succeeding generations. It cannot be diverted from religious uses, or ever again become private property. If a private person bequeath fifty thousand dollars with which to maintain six free beds for Boston sick or wounded in the Massachusetts General Hospital, which is an institution supported by endowments, that beneficent act obviates forever the necessity of maintaining six beds at the Boston City Hospital, which is an institution supported by direct taxation. If, by the sacrifices of generous and public-spirited people in seven generations, Harvard University has gradually gathered property which might now be valued at five or six millions of dollars, the State of Massachusetts is thereby saved from an annual expenditure of three or four hundred thousand dollars for the purpose of maintaining the liberal arts and professions; unless, indeed, the people of the State should be willing to leave the work of the university undone. To the precise extent of the work done by the income of endowments is the State relieved of what would otherwise be its charge. If some benevolent private citizen had built with his own money the State Lunatic Hospitals, the State would have been relieved of a very considerable charge. To tax such endowments is to reduce the good work done by them, and therefore to increase the work to be done by direct appropriation of government money, unless the people are willing to accept the alternative of having less work of the kind done. If the State wants the work done, it has but two alternatives — it can do it itself, or it can encourage and help benevolent and public-spirited individuals to do it. There is no third way.

The above argument in favor of the exemption of institutions of

religion, education and charity from taxation being conclusive unless it can be rebutted, I propose to consider successively the various attempts which have been made to repel or evade it.

The first objection which I propose to consider would be expressed somewhat in this fashion by one who felt it: "I admit that churches, colleges and hospitals are useful, and I do not wish to see their good work diminished; but these institutions get the benefit of schools, police, roads, street lamps, prisons and courts, and should help to support them; their friends and supporters are generous, and will more than make good what the institutions contribute to the city or town expenses." The meaning of this suggestion is just this: The body of tax-payers in a given community having, through the public spirit and generosity of a few of their number, got rid of one of their principal charges,— namely, the support of the institutions of religion, high education and charity — propose to avoid paying their full proportion of the remaining charges for public purposes, such as schools, roads, prisons, and police. They propose, by taxing the institutions which the benevolent few established for the benefit of the whole body, to throw upon these same public-spirited and generous men an undue share of the other public charges. To state the same thing in another form: there are in the community common charges, A, B, C, D and E; A has been provided for by a few private persons at their own cost, and the burden of other tax-payers has been to that extent lightened; thereupon the tax-payers say, Let us take part of the money which these men have given for A, and use it for meeting charges B, C, D and E. Our friends who provided for A will give some more money for that purpose, and we shall escape a part of our share of the cost of providing for B, C, D and E. It is at once apparent that this objection is both illogical and mean;— illogical, because if churches, colleges and hospitals subserve the highest public ends, there is no reason for making them contribute to the inferior public charges; and mean, because it deliberately proposes to use the benevolent affections of the best part of the community as means of getting out of them a very disproportionate share of the taxes.

The next objection to the exemption which I propose to consider is formulated as follows:— Churches, colleges and hospitals do indeed render public service; they are useful to the State; but let them be established because people feel the need of them, just as people feel the need of houses, and food, and clothes, and by all means let them

support themselves; they ought not to be favored or artificially fostered. Railroads, factories and steamship lines do service to the State; but it does not follow that they ought to be fostered by direct grants of public money, or be exempt from taxation. This objection is a plausible one at first sight; but there is a gap in the argument wide enough for whole communities to fall through into ignorance and misery. For the building of railroads, factories and steamships there exists an all-sufficient motive; namely, the motive of private gain; and they ought not to be built unless there be a genuine motive of that sort. A few men can combine together to build a cotton mill whenever there seems to be a good chance to make money by so doing; and they will thus supply the community with mills. The benefit they might confer upon the State would not be a legitimate motive for building a mill in the absence of the probability of private gain. Now this motive of private gain is not only absent from the minds of men who found or endow churches, colleges or hospitals, but would be absolutely ineffective to the end of procuring such institutions. It would be impossible for three or four men to establish and carry on a university simply for the education of their own sons. Those who found and maintain hospitals have, as a rule, no personal use of them. It is an unworthy idea that a church exists for the personal profit and pleasure of its members, or a college for the private advantage of those who are educated there. A church or a college is a sacred trust, to be used and improved by its members of to-day, and to be by them transmitted to its members of to-morrow. A modern church is an active centre of diffused charity, and of public exhortation to duty. The press has enlarged the public influence of the pulpit by adding the multitude who read the printed sermon to the congregation who listen to it. The orators, poets, artists, physicians, architects, preachers and statesmen do not exercise their trained faculties simply for their own pleasure and advantage, but for the improvement and delight, or the consolation and relief, of the community. In short, they do not live for themselves, and could not if they would. To increase virtue and piety, to diffuse knowledge and foster learning, and to alleviate suffering, are the real motives for founding and maintaining churches, colleges and hospitals. The work must be done through the individuals on whom the institutions spend their efforts, but the motive of those who promote the work is the public good and the advancement of humanity. Mills, hotels,

railroads and steamships, moreover, though they benefit the public, benefit them only in a material way; they provide clothing, shelter, easy transportation, and, in general, increase material well-being. People may be relied on to make themselves comfortable or wealthy, if they can; but they need every possible aid in making themselves good, or learned. The self-interest of no man, and of no association of men, would lead to the establishment of a university. The motive of private gain or benefit being wholly lacking in most cases, and feeble in all, it is to be expected that institutions of religion, high education and public charity would not be founded and maintained, except by the direct action of the State, on the one hand, or, on the other, by the benefactions of private persons encouraged by fostering legislation. This is precisely the experience of all the modern nations. The American States now do less for the institutions of religion directly than any civilized nation, and they have done wisely in completely avoiding an establishment of religion; but from the time when they ceased to support religious institutions directly they fostered them by exempting them from taxation. Institutions of high education never have been self-supporting in any country; and there is no reason whatever to suppose that they ever can be. If they were made self-supporting, they would be inaccessible to the poor, and be maintained exclusively for the benefit of the rich. The higher the plane of teaching, the more the teaching costs, and the fewer the pupils, from the nature of the case. As to the charitable corporations whose whole income is used upon the sick, blind or insane poor, the notion that they could ever be self-supporting is of course an absurdity. Hospitals and asylums which are wholly devoted to taking care of men and women of the laboring classes who have lost their health, their reason, or some of their senses, cannot be self-supporting in the nature of the case. It is an abuse of language to apply the word to them; they are inevitably supported by private benevolence, or from the government treasury, or by the combination of these two resources.

The opinion, then, that churches, colleges and charitable institutions would be established in sufficient numbers without fostering legislation, and be as well maintained taxed as untaxed, has no warrant either in sound reason or in experience. Not a bit of practical experience can be found in the civilized world to support it; and the analogy set up between these institutions of religion, education and charity, on the one hand, and establishments of trade, manu-

factures and transportation, on the other is wholly inapplicable and deceptive.

I come now to the consideration of an objection to the exemption, which is local in its nature, but not on that account less worthy of careful examination. Those who urge this objection admit that the public receives great benefit from churches, colleges and hospitals; but, as these institutions necessarily have local habitations, and taxes under our laws are locally levied, they allege that the particular cities or towns in which the institutions happen to be situated bear, in loss of taxable property, the so-called burden of their exemption, while the whole State, or perhaps the whole country, shares the public benefits which accrue from them. The public burdened, it is alleged, is not the same public as the public benefited. This objection assumes, in the first place, that it is a burden to a city or town to have a lot of land within its borders occupied by an institution exempted from taxation; and this assumption is based upon the belief that, if the exempted institution did not occupy the lot, the taxable houses, or factories, or stores within the limits of the city or town would be increased by the number of houses or stores which might stand upon the exempted lot. This is a proposition which is generally quite incapable of proof, and is intrinsically improbable, but which nevertheless has, in some cases, a small basis of unimportant fact. It implies that there is an unsatisfied demand for eligible land on which to build houses, or factories, or stores, within the city or town limits; but this can be the case only in very few exceptionally situated cities, and not all the time in them, but only spasmodically in seasons of speculation or unusual activity,— and even then not over their whole area, but only in very limited portions of it. Of course the cost of the buildings which might be erected upon a lot rescued from an exempted institution is not to be counted as an additional resource for the tax-gatherer; for that amount was, under our laws, taxable somewhere before as personal property. If, in any town or city, there are houses or factories or stores enough to meet the demand for such accommodations, the town or city will gain nothing by having more buildings erected. There may be more houses or more stores, but each house or each store will be worth less. In a large city there will always be a few streets, and perhaps wharves, which are absolutely needed for business purposes. Thus, for example, it might not be expedient to have an exempted institution, which had no need of

water-front, occupy a portion of a limited water-front, every yard of which was needed for commerce. It might not be expedient that a church should occupy a street corner, or an open square, in the heart of the business quarter of a growing city,— though London has not felt obliged to move St. Paul's into the country, or build upon Trafalgar Square. But such peculiar cases are to be wisely treated as the exceptions which they really are; at any rate, they cannot be made the basis of a great State's policy towards its most precious institutions,— its institutions of religion, learning and charity. As a rule, the amount of taxable property, real and personal, in a town or city is in no way diminished by the fact that a portion of its territory is exempted from taxation; and in many cases it is obvious that the taxable property is actually increased by reservations, whether natural — like small sheets of water — or artificial, — like parks, squares, or open grounds about churches and public buildings. It is well known that, in many new towns and cities of the Western States, it was a well-recognized and, in some cases, very successful device for raising the price of house-lots, and stimulating the speculation in land, to make a large reservation in the centre of the town for an academy or college. This is one of the reasons why there are such a multitude of colleges at the West. It is but a few years since several towns were bidding against each other to get the Massachusetts Agricultural College planted within their borders. The town of Amherst paid $50,000 for this privilege. In Boston itself, the block of land on which the buildings of the Natural History Society and the Institute of Technology stand, was given to those corporations on the condition that, if the lands surrounding the reserved area did not rise in value, in consequence of the grant, enough to cover the estimated value of the reservation itself, then the two corporations should pay the deficiency. These corporations never had to pay anything for their land. The city had just as much value in land available for taxation after the gift was made to these two exempted societies as it would have had if no such gift had been made. It cannot be maintained that the exemption of the church lots in a country town is in any possible sense a burden to the town, or that it diminishes in any way the valuation or amount of the property in the town which is available for taxation. On the contrary, every estate in the town is worth more to the occupant and to the assessor, because of the presence of those churches. The proposition that the presence, in a town or city, of

exempted institutions diminishes the amount of taxable property therein is, therefore, not only incapable of proof, but is manifestly untrue in the vast majority of cases. There are, nevertheless, some cases in which a new exemption involves a real loss, though not without compensations, to the town or city from which the property was abstracted; and there are also cases in which the restoration of an exempted piece of property to taxation might be a real gain, in spite of considerable losses. When a benevolent citizen of one town gives $100,000 of personal property to an exempted institution situated in another town, the first town loses so much property which was there taxable, and the second town has the local benefit of the institution, if there be any. On the other hand, the town which loses in this case has similar chances of gaining local benefits by gifts to institutions situated within its limits from citizens of other towns. Again, it by no means follows that the citizen who gave this $100,000 would have kept it in a taxable form at his place of residence, if he had not given it to an exempted institution. Such gifts are often — perhaps generally — made out of annual earnings or sudden profits; and if the $100,000 had not been given to an exempted institution, it might have been unprofitably consumed, or lost, or given away to individuals resident elsewhere. A good deal of the personal property which now goes to churches, colleges and hospitals, would be consumed outright if it were not so saved. If the gift is made by will, instead of during life, there are more chances that the $100,000 would, in the distribution of the property, have been carried away from the testator's place of residence, at any rate. When a piece of real estate is transferred to an exempted institution for its own proper use, the local benefits of the institution, if there be any, are for the same town which gives up the taxes on the piece of real estate, and the withdrawal of that piece from productive uses probably brings some other piece into use at once, or at least sooner than would otherwise have happened. It would seem, at first sight, as if it would be clear gain to get a piece of land, once exempted, taxed again, and covered with taxable houses or stores; but there are always drawbacks on the gain. If Boston Common should be cut up and built upon, the conveniently situated houses and stores built there would cause other houses and stores, less well placed, to be vacated, or to fall in value; and the improvement of real estate in the outskirts would be arrested or checked for a time. The estates which face the Common would

also fall in value. It would be a permanent gain that the business of the city would probably be more conveniently done thereafter; and this indirect gain, whatever it might be, would ultimately be represented in the taxable property of the city. In this particular instance the productiveness of Boston would doubtless be diminished by the loss of health, vigor and spirits, on the part of the inhabitants, consequent upon the loss of the healthful open area. It is, then, quite impossible to maintain that any exemption is a clear loss to the place in which it exists. With every loss there come chances of advantage. Sometimes the loss is great and the compensation small, and sometimes the advantages quite outweigh the loss. We have seen that, in the long run, there is no real loss to the State at large; and, in all probability, the local gains and losses of the various towns and cities of the Commonwealth would be found to be distributed with tolerable fairness, if the averaging period were long enough. Absolute equality in matters of taxation is unattainable.

It is important to demonstrate satisfactorily the statement just made, that great advantages often accrue to a town or city from the presence of institutions exempted from taxation, advantages which much more than offset any losses which are real. A concrete instance will best illustrate this proposition; and no better instance can be chosen than that of Harvard University, an exempted institution occupying about seventy acres of land in the city of Cambridge, which land, with the buildings thereon and their contents, is alleged by the assessors to be worth from three to four millions of dollars. This case is perhaps as strong as any on the side of the objectors to the exemption, because the exempted area is large and its value is high, and on this very account it is a case well adapted to my present purpose. In the first place, all the land which faces or adjoins the university's inclosures, is enhanced in value in consequence of that position. The open grounds of the univeristy have the same effect on the surrounding lands which open space of an ornamental character always have in cities. They improve the quality and value of the whole neighborhood. Secondly, the university brings to Cambridge a large amount of personal property, which becomes taxable there. The fifty families, of which the heads are teachers in the university, possess, on the average, an amount of personal property which much exceeds the property of the average family throughout the city. A considerable number of families are always living near the university

for the sake of educating their children. They come to Cambridge, for this express purpose, and stay there from four to seven years, or sometimes indefinitely. Many of these families have large means; in fact, few others could afford such a temporary change of residence. Again; families of former officers and teachers in the university continue to live in Cambridge; and it is notorious that some of the largest properties taxed in the city are of this sort. Finally, families come to Cambridge to live because of the society which has gathered about the university. The amount of taxable personal property brought into ward one of Cambridge by the university in these several ways counts by millions. Accordingly, this ward is the richest ward in Cambridge, and has always been the most desirable part of the city to live in, as the character of its houses and of its population abundantly testifies. It has eighteen per cent. of the houses in Cambridge and sixteen per cent. of the polls, while it has thirty per cent. of the taxable property. The ward had no natural advantage over the rest of the city, having, to this day, its fair share of bogs, salt marshes and sandy barrens. The greater part of its surface is but a few feet above high-water mark, and nothing but the presence of the university during two hundred and forty years has made it the desirable place of residence which it is.

In still another way does the university bring taxable money to Cambridge. It collects from its students in Cambridge about $150,000 [1] a year, adds thereto about $50,000 [2] of the income of its personal property, and pays this large sum out as salaries and wages to people who live in Cambridge. A large portion of this sum is annually taxed by the city as the income of individuals in excess of $2,000 a year.

It is well understood that the building of a new factory in a village, or the introduction of some new industry into a town, which gives employment to a large number of respectable people, is a gain to that village or town. Whatever brings into a town a large body of respectable consumers benefits that town. Now, the university brings into Cambridge a large body of respectable consumers; there are fifty families of teachers, about fifty more unmarried officers, about one thousand students, and about one hundred janitors, mechanics, laborers, bed-makers and waiters, a fair proportion of whom have families. As the great part of these persons belong to the refined and intelligent and well-to-do class, they consume very much more

[1] In 1908–09, $750,000. [2] In 1908–09, $400,000.

than the average of the community. The money thus spent in Cambridge is mainly brought from without, for the greater part of it is either derived from the personal property of the university, or it is money brought from home by the students. If it were not for the presence of this body of consumers, the land, houses and shops of that part of Cambridge would all be worth less than they are, and the assessors would find so much less to tax.

It is a great advantage to a city to have a place of high education at its doors, just as it adds to the attractiveness and prosperity of a city to maintain good schools. Nearly one hundred [1] Cambridge young men are now members of the university.

The grounds of the university adorn the city, and serve as protection against spreading conflagrations. They give light and air, trees, shrubs, grass and birds to a part of the city which must soon become densely populated. In the future they will serve many of the purposes of a public park, while they will be maintained without expense to the city. The buildings and collections of the university, which are becoming more and more attractive, are a source of interest and pleasure to all the people of the neighborhood. It is a curious illustration of the incidental advantages which Cambridge has reaped from the presence of the university, that printing and binding are still principal industries in the city, industries which give employment to hundreds of work-people and a large taxable capital. The business of printing was planted in Cambridge by the college, and was maintained there by the college, in spite of great difficulties, for many years.

Finally, the presence of the university gives distinction to the city. Cambridge is one of the famous spots of the country, and its citizens take pride and pleasure in its eminence.

I have taken a single notable example through which to exhibit the various advantages which a town or city may derive from the presence of one of the exempted institutions. *Mutatis mutandis*, the principles just laid down apply to almost all of them, with a force which varies with the locality, the nature of the institution, and the stage of its development. The benefits of many of the exempted charitable institutions are almost exclusively local. The direct benefits of a town's churches are largely, though not exclusively, local, and if the church buildings are beautiful, or interesting from historical associations, this indirect benefit is local too. It may not be impossible

[1] In 1908–09, 292.

to pick out some exceptional institution of education or charity, or some single peculiarly placed church, to which these principles concerning the bearing of the exemption upon the interests of localities may not apply in their full force, or may not apply at all at a given moment; but the legislator should never be much influenced by the exceptions to general rules, or by momentary abnormal phenomena, or by the back eddies in a strong current of opinion.

We have seen that exempted institutions are considered by towns desirable acquisitions, in spite of the exemption. There is competition among them even for the state prison and the lunatic asylums; and they doubtless understand their own interests. But if the towns were allowed to tax the institutions now exempted, what a treasure would a college, or a hospital, with a large amount of personal property, be to a town! The town would have all the indirect local benefits of the institution, and the taxes on its property besides; and this unmerited addition to the property taxable in the town would correspond to no service performed, sacrifice made, or burden borne by the town.

It has been often asserted, that to exempt an institution from taxation is the same thing as to grant it money directly from the public treasury. This statement is sophistical and fallacious. It is true that the immediate effect on the public treasury is in dollars and cents the same, whether Harvard University be taxed $50,000, and then get a grant of $50,000, or be exempted from taxes to the amount of $50,000, and get no grant. The immediate effect on the budget of the university would also be the same. The proximate effects of these two methods of state action in favor of religion, education and charity are however unlike,— so unlike, indeed, that one is a safe method, while the other is an unsafe method in the long run, though it may be justifiable under exceptional circumstances. The exemption method is comprehensive, simple and automatic; the grant method, as it has been exhibited in this country, requires special legislation of a peculiarly dangerous sort, a legislation which inflames religious quarrels, gives occasion for acrimonious debates, and tempts to jobbery. The exemption method leaves the trustees of the institutions fostered untrammelled in their action, and untempted to unworthy arts or mean compliances. The grant method, as practised here, puts them in the position of importunate suitors for the public bounty, or worse, converts them into ingenious and unscrupulous

assailants of the public treasury. Finally and chiefly,— and to this point I ask special attention,— the exemption method fosters public spirit, while the grant method, persevered in, annihilates it. The State says to the public-spirited benefactor, "You devote a part of your private property forever to certain public uses; you subscribe to build a church, for example, or you endow an academy; we agree not to take a portion of the income of that property every year for other public uses, such as the maintenance of schools, prisons and highways." That is the whole significance of the exemption of any endowment from taxation. The State agrees that no part of the income of property, once private, which a former generation, or the present generation, has devoted forever to some particular public use shall be diverted by the State to other public uses. The exemption method is emphatically an encouragement to public benefactions. On the contrary, the grant method extinguishes public spirit. No private person thinks of contributing to the support of an institution which has once got firmly saddled on the public treasury. The exemption method fosters the public virtues of self-respect and reliance; the grant method leads straight to an abject dependence upon that superior power — Government. The proximate effects of the two methods of state action are as different as well-being from pauperism, as republicanism from communism. It depends upon the form which the action of the State takes, and upon the means which must be used to secure its favor, whether the action of the State be on the whole wholesome or pernicious. The exemption is wholesome, while the direct grant is, in the long run, pernicious.

There has been, of late years, a good deal of vague declamation against endowments. We have heard much of the follies and whimseys of testators, and fearful pictures have been painted of dead hands stretched out from the cold grave to chill and oppress the living. We frequently read sneers and flings at those benefactors of the public who, living or dying, consecrate their money to religious, educational or charitable uses. In urging the abolition of the exemption, much use has been made of this sort of appeal. What is its basis? Are there any grounds whatever for jealousy of endowments? Millions of private property in this State have been devoted to public uses of religion, education and charity. These endowments are all doing good work for the present generation, and are likely to do good to many generations to come. To how many injurious or useless en-

dowments can any one point in Massachusetts? There are persons who too hastily say that they hold Catholic churches to be injurious endowments; but it must be a very bigoted Protestant that does not admit that a Catholic church is better for a Catholic population than no church at all. Catholics would doubtless, in these days, grant as much as that for a Protestant population. The judicious legislator, when he speaks of the church, does not mean any particular church, or the churches of any particular sect; he means the sum of all the churches, the aggregate of all religious institutions, Christian, Israelite and Greek, Roman and Protestant, Congregational, Baptist, Anglican and Quaker. To legislate, directly or indirectly, either for or against any particular religious belief or worship, would be utterly repugnant to all sound American opinion and practice.

What silly fancy or absurd whim of a testator can be instanced in Massachusetts? Is anybody in this country obstructed, as to his rights, duties or enjoyments, by any endowment or foundation provided by the living or the dead? The suggestion is to the last degree ungrateful and absurd. Because there have been found in England a few endowments six or seven centuries old, which, in the changed condition of society, had come to do more harm than good, shall we on this fresh continent, in this newly organized society, distrust all endowments? Let us at least wait to be hurt before we cry out. If the time ever comes in this country when certain endowments, or classes of endowments, are found to do more harm than good to the community, legislation must then reform them, so as to prevent the harm and increase the good. We may be sure that our descendants of five centuries hence will have the sense to treat the endowments which we are establishing as England has treated some of her mediæval endowments — reconstruct them, when they need it, without destroying them. Taxation would not only be no remedy for the folly of endowments, if there were foolish endowments; but it would actually abridge the moral right of the State to interfere with mischievous endowments. Institutions which are fostered by the State through exemption from taxation must admit the ultimate right of the State to inquire into the administration of their affairs. An institution, on the other hand, which got no help from the State, and was taxed like a private person, would have a right to claim all the immunity from state inquiry into its affairs which an individual may claim. Thus the State may and should demand from every exempted institu-

tion an annual statement of its affairs which could be given to the public; but no such statement for public use could properly be demanded of an institution which paid taxes like any private citizen. Such an institution would have a moral right to the privacy which an individual is entitled to in a free country.

In this country, when one wishes to scoff at endowments, he must draw on his imagination for his facts. There is but one well-founded charge to bring against our countrymen in this matter of setting apart private property for public uses of religion, education and charity. They scatter their gifts too widely, so that a greater number of institutions are started than can be well maintained. But the remedy for this evil is to consolidate endowments,— not to tax them. This consolidation has already begun, and will be brought about by the gradual enlightenment of public opinion on this subject. To draw a vivid picture of alleged scandals and abuses, and then propose some action of an irrelevant nature, desired for other reasons, as if it were a remedy for those scandals and abuses, is a well-known device of ingenious disputants; but it is a device which ought not to impose on clear-headed people. To prejudice the mass of the people against endowments is the part of a demagogue, for it is to induce them to act ignorantly in direct opposition to their own real interests; since endowments exist for the benefit of the great mass of the people, while they are a matter of but slight concern to the rich. The rich man does not care whether education be dear or cheap; he does not want the scholarships of a college; he does not need to send his children to a hospital; he could afford to keep a clergyman in his own family, if he cared to. It is the poor man who needs the church which others have built; the college which, because it has endowments, is able to offer his ambitious son a liberal education; the hospital which can give him, when disabled, attendance as skilful and careful as the rich man can buy. Moreover, the poor man has no direct interest in this proposed taxation of the institutions now exempted; it will not help him pay his poll-tax, nor lessen the amount of it; it will help no one but the property-holders. It is natural enough that a property-holder who has no public spirit should desire to escape his share of the charge of supporting institutions of public utility, on the ground that he feels no personal need of them. But that a man of property feels no want of institutions which are necessary to the security of the community, and does not believe in them, is no reason

for excusing him from his share of the support of these institutions. The doctrine that a citizen can justly be called upon to contribute to the support of those things only which he approves, or which are of direct benefit to him, would cripple our public schools as well as our colleges, and, in fact, would destroy the basis of almost all taxation.

The Massachusetts statute about the exemption, as it is administered, guards effectually against all the real evils described by the law term "mortmain,"— a word, the translation of which seems to be such an irresistible rhetorical titbit for many who advocate taxing churches and carrying on universities by legislative grants. It is, indeed, inexpedient that religious, educational, or charitable corporations should hold large quantities of real estate for purposes of revenue; first, because experience shows that such corporate bodies do not, as a rule, improve real estate as steadily and promptly as individuals; and secondly, because the accumulation of large quantities of land in single hands, although permissible, and often rather beneficial than hurtful to the community, is an operation which needs the natural check of death and distribution among heirs. This check is wanting in the case of permanent corporations. Now, the Massachusetts statute does not exempt from taxation real estate held by religious, educational and charitable institutions for purposes of revenue. On the contrary, all such property so held by these institutions pays taxes precisely as if the pieces of property belonged to private individuals. If the Old South Church corporation owns stores, from which they derive income applicable to the purposes of their trust, those stores are taxed precisely as if they were the property of individuals. Harvard University owns a number of stores in the business part of Boston; with one exception (a store included in the exemption given by the charter of 1650), these stores are taxed just as if they belonged to an individual. If the Catholic Church undertakes to hold real estate for income, or as an investment, it has to pay taxes on such property, under the existing statute, like any private citizen. No exempted institution can hold real estate free of taxes except that which is fairly necessary for the purposes of the religious, educational or charitable trust. It would be a dishonorable evasion of the real intent of the statute to claim exemption on real estate which was bought with the intention of selling it again at a profit; and if any addition could be made to the statute which would make such a practice impossible, or would subject to penalties any institution

which should be guilty of it, such an addition would be an improvement; although it is altogether likely that the offence contemplated has never, as a matter of fact, been committed. Of course, the mere fact that an institution has made a sale of exempted land is not in itself evidence of an evasion of the statute; for poverty may compel an institution to part with land which it ought, in the real interest of the trust, to keep. It is also a perfectly legitimate transaction for an exempted institution to sell one site in order to occupy another. One cause of the agitation for the abolition of the exemption has been the distrust awakened by sales of church property at large profit in the older parts of our growing cities. But these sales are perfectly legitimate. Those who believe in the public utility of churches need only to be assured that the proceeds of these advantageous sales must be invested in new churches,— that none of the property can relapse into the condition of private property. This assurance the action of the Massachusetts Courts indisputably gives. It is hard to see why these transfers of churches from more valuable to less valuable city lots should seem a grievance to anybody. Whenever a city church sells its old site for a large sum, buys a new site for a much smaller sum, and with the balance erects a handsome church, the amount of property exempted from taxation remains precisely what it was before, and the city gains an ornamental building. There is less value in the exempted land than before, but more in the building. On the whole, considering the nature of American legislation concerning testamentary dispositions and the holding and transfer of land; considering the nature and history of our ecclesiastical bodies, and the mobility of our whole social fabric, there is probably no economical evil from which an American State is so little likely to suffer as the mediæval evil of mortmain. To live in apprehension of it would be as little reasonable as for the people of Boston to live in constant dread of being overwhelmed by an eruption of lava from Blue Hill.

It has been suggested by persons who apprehend that the institutions of religion, education and charity, or some of them, will get a disproportionate and injurious development, that only a limited exemption should be allowed them, the limit to be fixed by legislation. If, however, the property of these corporations is really held and used for a high public purpose, it is hard to understand how it can be for the interest of the public to pass any laws which tend to limit the amount of that property,— at least until more property has been set aside for

that purpose than can be well used. If it is inexpedient for the State to use for its common purposes — not religious or educational — any portion of the income of a church or an academy up to $5,000, why is it not also inexpedient to divert from religious or educational uses any portion of the income above $5,000? If the legislature could tell with certainty just how much property it was expedient for a church, or a college, or a hospital to have, then a limit for exempted property in each case would be natural and right; but the legislature cannot have this knowledge; and if they could acquire it for to-day, it would be outgrown to-morrow. Moreover, the circumstances and functions of the various exempted institutions are so widely different and so changeable, that each institution would necessarily have its own limit prescribed by law, and would be incessantly besieging the legislature for a change in its limit. The legislature would be forced to keep removing the limit of exemption, because in most cases there would be no logic in the limit. The more books there are in a library, the better; it would be absurd to exempt the first hundred thousand, and tax the second hundred thousand. The more good pictures, statues and engravings there are in an art museum, the better; it would be absurd to exempt a museum while it had few of these precious objects, and tax it when it got more, and so became more useful to the public. A sumptuary law to prevent the erection of beautiful churches, by taxing the excess of the value of a church above a certain moderate sum, would be singular legislation for Massachusetts. Who can tell how much money Harvard, or Amherst, or Williams could use legitimately to-day for the advantage of the State in advanced education? If one knew to-day, the knowledge would be worthless next year. The one perfectly plain fact is, that no one of the institutions of advanced education in this State has one-half the property which it could use to advantage. It would be cruel mockery to enact that a woman, who can hardly buy calico and flannel, shall not wear velvet and sable. The amount of exempted real estate which any of the exempted institutions can hold is limited by natural causes. As such real estate is, as a rule, completely unproductive, the institution will not be likely to tie up any more of its property in that form than it can help. A limit to exempted real estate has seemed desirable to some persons, because it has sometimes happened in large cities that institutions of religion, education or charity, have changed their sites with great profit; but in such cases the community gets the whole advantage of the profit in

the increased work of the church, college or hospital. Moreover, such transactions imply a growing population, likely to make increasing demands upon the institutions of religion, education and charity, which, therefore, need all the new resources which the growth of population fairly brings them.

Those who advocate limiting the amount of the exempted property which may be held for a religious, educational or charitable trust, seem to forget that it is the public which is the real enjoyer of all such property, and that it is the public only which is really interested in its increase, except as gratitude, affection or public spirit may prompt individuals to share this public interest. All such trusts are gifts "to a general public use, which extends to the poor as well as the rich," to quote Lord Camden's definition of a charity in the legal sense. They are gifts for the benefit of an indefinite number of persons, by bringing their minds under the influence of religion or education, or by relieving their bodies from disease. They are trusts in the support and execution of which the whole public is concerned, on which account they are allowed, unlike private trusts, to be perpetual. Now, for the public to make laws which tend to discourage private persons from giving property to the public for its own uses, is as unwise as for the natural heir to put difficulties in the way of a well-disposed relative who is making his will. The fact that the property of these public trusts is administered by persons who are not immediately chosen or appointed by the public, obscures to some minds the essential principle that the property is really held and used for the public benefit; but the mode of administration does not alter the uses, or make the property any less property held for the public. Experience has shown that many of the religious, educational and charitable works of the community can be peacefully, frugally and wisely carried on by boards of trustees; and that method has been preferred in England and the United States. On the continent of Europe these functions are discharged by government; but, under both methods of administration, the functions are public functions. The fact that nobody has any permanent interest in the property of such trusts, except the public, is well brought out by imagining what would occur if a church, or an academy, or an insane asylum should be taxed, and nobody should come forward to pay the taxes. It is nobody's private interest to pay such taxes. The city or town could proceed to sell the church or other building belonging to the trust; but if it did so, the effect would be

that a piece of property, which had been set apart for public uses, would become private property again, unless some benevolent persons should, for the love of God or the love of their neighbors, buy the property over again for its original public uses. A city might as well levy taxes on its city hall, and sell it for taxes in default of payment.

It remains to consider the effect of abolishing the exemption. No church could be maintained upon ground which would be very valuable for other purposes, and costly church edifices would be out of the question. A society whose land and building were worth $300,000 would have to pay $4,500 a year in taxes, besides all the proper expenses of a church. The burden would be intolerable. The loss to the community, in that pure pleasure which familiar objects of beauty give, would be unspeakable. The village could spare its spired wooden church as ill as the city its cathedral. Cities have learned that fine architecture in their own buildings is a justifiable luxury. On the same betterment principle handsome churches are profitable to the public as well as delightful. I say nothing of the grievous moral loss to the whole people which would result from crippling the existing churches, and making it harder to build the new ones which our growing population should have. That loss would be deep and wide-spread and lasting; but other pens than mine can better depict it. Educational institutions would be obliged to take the taxes out of the income of their personal property or out of their tuition fees. The fifty or sixty thousand dollars which the city of Cambridge would take next year from Harvard University would be deducted from the money now available for salaries of teachers. This sum represents the pay of from twelve to fifteen professors, or of a much larger number of teachers of the lower grades. Moreover, the sum thus withdrawn from teaching would annually increase with the rising value of land in Cambridge; while it can by no means be assumed that the personal property and tuition fees of the University would increase proportionally. The burden might easily become wholly unbearable. The barbarous character of the proposition to tax property devoted to educational purposes may be well brought home by specifying a few of the items of what would be the tax on Harvard University. Memorial Hall, with the two acres of land in which it stands, would be taxable for not less than $550,000 next year, and there is no telling the price per foot to which the land may rise, for it is well situated between three good streets. Eight thou-

sand dollars would be next year's tax on that monument of pure devotion to the public good, and every year the tax would increase. Charlestown might as well be allowed to tax Bunker Hill Monument, as Cambridge to tax Memorial Hall. To commemorate the virtue of its one hundred and forty graduates and students, who died for their country in the war of the Rebellion, would cost the University the salaries of at least two professorships every year, in addition to the original cost of the land and buildings and the maintenance of the buildings. Moreover, every added picture or bust would entail an additional contribution on the part of the University to the ordinary expenses of the city of Cambridge. To place Charles Sumner's bust in the Hall would increase the annual taxes by $7.50 and to hang there the portrait of Col. Robert G. Shaw, who was killed at Fort Wagner, would give $15 a year to the city. The College Library may be freely consulted by all persons, whether connected with the University or not. With the building which contains it, this collection of books could hardly be valued at less than $300,000,— a sum very far short of its cost. There would, therefore, be a tax upon that library of perhaps $4,500 a year now; and, as about $10,000 worth of books are bought each year, the annual increase of the tax would be sure. If it is inexpedient that such a library should be exempt from taxation, how wrong it must be that cities and towns should pay all the expenses of public libraries, besides exempting them from taxation. The Observatory, an institution maintained solely for the advancement of knowledge, and having no regular income except from its endowments, is necessarily surrounded by open grounds, embracing several acres, and it must remain so protected, if good work is to be done there. The taxes on this land would eat up half the income of the Observatory, now, and in a few years the whole income. The richer and more populous Cambridge became, the heavier would be the charges upon the University, for the higher would be the price of land throughout the city. It is to be observed, that the facts and illustrations used to support the proposition that institutions of religion, education and charity must be taxed, are mostly drawn from the rich towns and cities of the Commonwealth — not from the country villages. The advisability of taxing churches, colleges and hospitals, does not seem to suggest itself until a community gets very rich,— until its territory is at a great price per square foot. When Cambridge was a country village, she was glad to give the College a site for its first building.

The abolition of the exemption would reduce the service of all the institutions of advanced education in the State from 20 to 25 per cent. at present, and this diminution of efficiency would grow greater year by year. All the academies, colleges, professional schools, and scientific or technical schools, all the libraries not town libraries, all the museums of art or natural history, would see from one-fifth to one-quarter of their income diverted from education, and applied to ordinary city and town expenditures. An extravagant city or town government might at any time demand much more than one-fourth of their income. Precious institutions, which render great services to the whole States, or perhaps to the nation, would be at the mercy of a single local government.

EXTRACT FROM THE REPORT OF THE COMMISSIONERS APPOINTED TO INQUIRE INTO THE EXPEDIENCY OF REVISING AND AMENDING THE LAWS RELATING TO TAXATION AND EXEMPTION THEREFROM.

January, 1875.

EXTRACT FROM THE REPORT OF THE COMMISSIONERS APPOINTED TO INQUIRE INTO THE EXPEDIENCY OF REVISING AND AMENDING THE LAWS RELATING TO TAXATION AND EXEMPTION THEREFROM.

JANUARY, 1875.

EXEMPTIONS FROM TAXATION.

Since, in the resolve requiring our appointment and assigning our duties, "the laws of the state relating to taxation" held the first place, and since these embrace incomparably vaster pecuniary interests, and involve questions of much greater difficulty and importance than the laws relating to the other topic assigned us, we have given to these the chief place in our report. But we have not been unmindful of the laws relating to exemption from taxation, respecting which we submit the following considerations.

By existing statutes (G. S. ch. 11, § 5) the following persons and polls are exempt from taxation by this Commonwealth.

First. The property of the United States.

Second. The property of the Commonwealth, except real estate of which the Commonwealth is in possession under a mortgage for condition broken.

Third. The personal property of literary, benevolent, charitable and scientific institutions incorporated within this Commonwealth, and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.

Fourth. All property belonging to common-school districts, the income of which is appropriated to the purposes of education.

Fifth. The Bunker Hill Monument.

Sixth. The household furniture of every person, not exceeding one thousand dollars in value, his wearing apparel, farming utensils, and mechanics' tools necessary for carrying on his business.

Seventh. Houses of religious worship and the pews and furniture (except for parochial purposes), but portions of such houses appropriated for purposes other than religious worship shall be taxed at the value thereof to the owners of the houses.

Eighth. Cemeteries, tombs and rights of burial, so long as the same shall be dedicated for the burial of the dead.

Ninth. The estate, both real and personal, of incorporated agricultural societies.

Tenth. The property to the amount of five hundred dollars of a widow or unmarried female, and of any female minor whose father is deceased, if her whole estate, real and personal, not otherwise exempted from taxation, does not exceed in value the sum of one thousand dollars.

Eleventh. Mules, horses and neat-cattle less than one year old, and swine and sheep less than six months old.

Twelfth. The polls and any portion of the estates of persons who, by reason of age, infirmity and poverty are, in the judgment of the assessors, unable to contribute fully towards the public charges.

Thirteenth. Beet-sugar manufactories, for ten years from 1872. (1872, 327).

Fourteenth. So much of the income from a profession, trade or employment as exceeds the sum of two thousand dollars. (G. S. ch. 11, § 4; 1873, 354).

The first of the above-enumerated classes, the Commonwealth has neither the power nor the right to tax.

The second class a small number of economists advocate the propriety of taxing, on the ground, as they term it, that there ought not to be any "deadheads" in taxation, and that the Commonwealth ought to keep as clean and as rigorous accounts with herself as with her subjects. But any such doubtful advantage would hardly compensate for the additional cost which the process would involve, and this subject may probably be dismissed as not needing any extended consideration. (Rossire et al. *v.* Boston. 4 Allen, 57.)

But, as many persons claim that the third class ought no longer to be exempted, we have given to this question very careful attention, and, as the result, we recommend that the existing laws of the Commonwealth relating thereto remain unchanged. (See opinion of minority.)

Briefly stated, the following positions upon this point seem to us to be sound:

Taxation is a certain requirement which the state makes upon its subjects for the public welfare. Though nominally and technically levied upon property, it is really laid upon persons, and is a lawful demand that they use their property not solely for their own good, but also for the good of others. It is not, indeed, a demand for property as such, but only for a particular species of property, viz., money. As already remarked, taxation is not a payment to society for certain social privileges and immunities, but it is the enforcement of the right, and the fulfilment of the obligation revealed in the very existence of the state and its subjects. Like all the service which the state requires, this involves the righteous surrender or subjection of the individual will to the will of the community. When this self-surrender is free and complete, there is nothing more to be desired, either on the part of the individual or the state. The perfect individual and the perfect state would both be found in the free and full surrender of every individual to the welfare of every other. Whatever favors this most desirable attainment, should receive every encouragement. All gifts, whereby an individual shows any true self-forgetfulness for the public good, will not only be welcomed, but the disposition to make them will be encouraged and fostered by every wise state. As a general rule, all such gifts are in the exact line of what the state seeks to secure by its taxation, and there is really just as great an absurdity in taxing them as there would be in retaxing the taxes themselves. Instead of taxing such gifts, the state might more profitably encourage them by bounties. She should encourage all acts of every sort whereby a man is disposed to render an unselfish service to his fellow-men, always indeed superintending such acts and repressing whatever would be injurious, but also always fostering that self-forgetfulness, in the free and full exercise of which, by every individual, consists the highest well-being, both of himself and the state. Property, which passes out of private hands a free-will offering for public uses, and which loses thereby its entire power of reproducing itself for private gain or emolument, deserves very different treatment, for it must ever stand in a very different relation to the state from that which private parties can still control for private ends.

The only proper question in such a matter is, whether the gifts are really for the public good. An individual may be truly unselfish, and yet not wholly wise, and might generously, but ingorantly, direct his gifts in a way for the public injury. But in such a case the proper

course for the state would be, not to tax such gifts, but to refuse or prohibit them.

It is very possible that the property given to our charitable, educational or religious institutions, may, at any time, find itself directed, either by the will of its donors or its managers, into channels not favorable to the public welfare, and it is very clear that over all such matters the state should exercise her wise supervision and just authority. We believe that the machinery for such an exercise is already provided by our courts, but if not, we recommend the enactment of statutes by which, even if individuals or corporations devote property, ostensibly for charitable, educational or religious purposes, but in a way not favorable or even prejudicial to charity, education or religion, such mistakes may be lawfully corrected.

It would be a singular contradiction, not only to the treatment of education, which has given this Commonwealth such glory in the past, but also to the entire educational system for which Massachusetts has such eminence at the present time, if we should put the slightest bar upon, or fail to give every encouragement to any efforts for the promotion among our people of knowledge in every department of literature, science or art. The original constitution of the state still remains unaltered in its declaration that,—

"Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, *it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth*, to cherish the interests of literature and science, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; *to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures*, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections and generous sentiments among the people." (Chap. 5, § 2.)

This is, to-day, the fundamental rule for the guidance and control of the legislature in its dealings with the subject. Before and since

its formal announcement, in 1780, the practice of the state has been uniform and unbroken to obey its commands and encourage religion, science and charity, by giving the property donated to those objects immunity from the burdens of taxation. Were not the donors of such funds justified in believing that our legislatures and magistrates, in all future periods of the Commonwealth, would observe their duty in cherishing and preserving these immunities? Would not their repeal, so far as it would bring under taxation, funds heretofore donated in the belief that the immunity would be permanent, savor of a breach of the public faith?

We now levy an educational tax amounting, for 1873, to $3,889,-053.80, for the support of our admirable system of common and normal schools, and whatever any one might think of this sum, whether too much or too little, no one will probably complain of the principle upon which such a tax is laid. (Report of secretary of board of education, 1873, p. 108.) Every one acknowledges that the state would be derelict in duty and forgetful of all of her high interests, if making no provision for the education of her people. But the same arguments which require the establishment of common schools, require also, and more emphatically, the establishment of higher seminaries of learning, academies, colleges and professional schools. As a matter of fact, these higher schools have not grown out of the lower, and do not rest upon them, but the higher school is, historically, first, and the lower one is not its precursor, but its product; there is no law of evolution by which the common school grows up into the college, for, as an historical fact, the college is actually first, and gives birth to the common school. No one can trace the history of education in any country in Europe, without noticing that the university is, in every instance, the mother and the foster nurse of common schools. It is not by the lower education of the many that we come to have the higher education of the few, but the exact converse of this is the universal rule. The education of the many is always dependent on the education of the few.

It is interesting to note how clear a knowledge of this great fact was entertained by the early founders of this Commonwealth. At the outset of their educational work, and as its foundation, they established Harvard College as early as 1636, and the sight must be very dim which does not see the dependence of the entire system of the common education of the people upon this institution alone, or the

strength and sustenance which Harvard and her sister colleges give to the common schools of the Commonwealth to-day.

The first order for the establishment and support of common schools in the colony of Massachusetts Bay, was issued by the general court in 1647, and is as follows:—

"It being one chiefe project of yt ould deluder, Satan, to keepe men from the knowledge of ye Scriptures, as in formr times by keeping ym in an unknowne tongue, so in these lattr times by pswading from ye use of tongues, yt so at least ye true sence & meaning of ye originall might be clouded by false glosses of saint seeming deceivers, yt learning may be not buried in ye grave of or fathrs in ye church & comonwealth, the Lord assisting or endeavors,—

"It is therefore ordred, yt evry towneship in this jurisdiction aftr ye Lord hath increased ym to ye number of 50 householdrs, shall then forthwth apoint one wthin their towne to teach all such children as shall resort to him to write & reade, whose wages shall be paid eithr by ye parents or mastrs of such children, or by ye inhabitants in genrall, by way of supply, as ye maior prt of those yt ordr ye prudentials of ye towne shall appoint; provided, those yt send their children be not oppressed by paying much more yn they can have ym taught for in othr townes; & it is furthr ordered, yt where any towne shall increase to ye numbr of 100 families or householdrs, they shall set up a gramer schoole, ye mr thereof being able to instruct youth so farr as they may be fited for ye university, provided, yt if any towne neglect ye pformance hereof above one yeare, yt every such towne shall pay 5£ to ye next schoole till they shall prforme this order." (Records of Mass. Bay Col., 1647, vol. 2, p. 203.)

This seems to have been copied from an order issued three years earlier by the united colonies of Connecticut, and which was there coupled with a provision for the maintenance of poor scholars in Cambridge. The early impulse to all this came not from the uneducated, but in both Massachusetts and Connecticut, "the natural and acknowledged leaders in the enterprise, the men who, by their religious character, wealth, social position and previous experience in conducting large business operations, commanded public confidence in church and Commonwealth, were educated men." (Barnard's legislation respecting common schools of Conn. 1636–38.)

Though Harvard College has received munificent gifts from the state, her largest endowments, as well as those of other colleges, have come from private benefactions. But for these, the colleges would have had no existence, or would have owed their establishment and support wholly to the state, as is the case with the great educational

institutions of the Old World. Nowhere has private beneficence more lavishly released the state from the necessity of taxing its subjects for the support of higher institutions of learning than in the United States, and in no one of these has this been more conspicuous than in our own Commonwealth. It will not prove wise economy for the state to repress such beneficence by laying a tax upon its exercise, nor is it a very enlightened or comprehensive view which can only behold the taxes which are not levied upon the property of these institutions, and does not see the much larger taxes which would have to be laid in behalf of education, had not private beneficence relieved the state of so large a part of its work. If a penny saved is as good as a penny earned, a pound saved is surely better to the possessor than the penny he has lost.

It should be remembered that the exemption in question, so far as real estate is concerned, only relates to the premises from which these institutions derive no revenue.

It should be noted, also, that, as a matter of fact, there is no practical inequality in the working of this exemption, calling for its removal, since the average rate of taxation in the towns most largely endowed with this class of exempted property, is less than the average rate through the Commonwealth. * * *

We have received from Messrs. Francis E. Abbot and Charles W. Eliot, valuable contributions to the discussion of the general question relating to the exemption of property devoted to literary, charitable and religious uses, and solicit the attention of the legislature to their papers, given in the Appendix. (pp. 151–160.) * * *

Respectfully submitted,

THOMAS HILLS.
JULIUS H. SEELYE.
JAMES M. BARKER.

Report of the Minority.

Unable to agree with the conclusions of my colleagues in regard to an important class of property now wholly exempt from assessment, the reasons that influence me can probably be better stated if the

whole question of the exemption from taxation of literary and charitable organizations and churches is considered from the stand-point from which the minority of the commission views the subject.

In a question of exemption, the practical side of the subject, the amount of property shielded from the common burden, and the inquiry as to the rapidity with which it is accumulating, naturally precede the consideration of the more important question of the justice or expediency of the exemption. (Property exempt in 1870 — churches, $22,862, 697; literary and charitable, $14,231,294. Ho. Doc. 216, 1870. 1874 — churches, $30,242,800; lit. and charitable, $23,221,000. Appendix, pp. 470–533.) The apparent great increase in this property which the statistics disclose, is no doubt due in part to a more careful appraisement, under the provisions of the recent law, than that made four years since under a legislative order, summarily executed. (1874, 227.)

But, on the other hand, an inspection of the tables in the Appendix leaves no doubt that the total of $53,463,800 is much below the real value of the property held by the organizations there classified. The small amount of personal property returned is conclusive upon this point. The Commonwealth endeavored, some years since (1864, 239. 1865, 271.), to ascertain the amount of personal estate held in trust by this description of property-holders. The success of the effort can be measured by an inspection of a volume of some two hundred and fifty pages, which indicates that the personal property held at that time would aggregate to a large amount, and that this class of investors as little desired as any other in the community to make a public exhibit of their accumulations. (Report of sec. of Commonwealth, 1866).

But it may be said, Do you object to the prosperity of these institutions? In proportion to their resources, are their means for doing good. To complain of their having too much property is as unreasonable as to complain of having too much virtue, knowledge and charity.

The answer would seem to be: We do not object to the success of these organizations; on the contrary, we rejoice at it. But when the state requires a revenue, and orders that the property of the community shall be assessed to supply it, valuable property should not be left out of the assessment because the holders are using it to promote religion, education and benevolence.

Upon a different view, it would be difficult to say why a good corporation should be exempt and a benevolent citizen taxed.

Upon one ground, and one alone, can exemption from assessments, which ought to be common burdens, be justified. If these religious, charitable and educational associations are agents or instrumentalities of the state, doing the work which but for them the Commonwealth herself must do, and doing it as well and at as little cost as the officers or agents of the government would do it; or if an organization whose sphere is beyond the duty of the state, but so important to her best interests that it must be sustained at any cost, and cannot sustain itself and do its work if its property is taxed,— if these conditions exist, the state is justified in increasing the assessments of all others that these institutions may be exempt. Few will be found who are not ready to admit that it is the duty of the state to provide for the sick in body or in mind, the poor, and all others whose necessities demand that relief which we call "charity,"— and few who will not agree that among the highest obligations which the Commonwealth owes to her children, is an education limited only by the capacity, the ambition, and the opportunities of each seeker after knowledge. These duties and obligations belong to the state, not to any individual or association. It follows that the state has a right to select her agents, and may select organizations which she has called into being, or permits to exist. But the agent is entitled to no exemption, except as the representative of the state, which has the right to say — if, in her judgment, the required duty is not being done well or economically — that she prefers different agents.

If the hospital, or college, is doing the work of the state, it follows that the property necessarily used in such service should be exempt; but this exemption should not be allowed to extend to real property beyond that needed for actual accommodation and use. Judicial decisions have declared that, as the laws now stand, there is practically no limit to the amount of land a literary or charitable organization can withdraw from assessment, except the ability of the corporation to purchase, and the discretion of its managers. (Wesleyan Academy *v.* Wilbraham. 99 Mass. 599. Mass. Gen. Hos. *v.* Somerville. 101 Mass. 319.) A corporation receiving exemption from taxation because it is doing the work of the state, should be permitted to hold no dead property; certainly no unproductive or unused real estate. Its exemption can be maintained only upon the theory that its real estate is reasonably necessary for the proper performance of its duties, and that its other property is actively employed in the work it is doing as the

representative of the Commonwealth. The state gives immunity from taxation to property used in her service, and it should not be granted in advance of that use.

The Commonwealth, in granting a charter to a literary or charitable corporation, limits the amount of property it may hold. The right to ascertain at any time the amount of property held, must be as undoubted as the right to establish a limitation.

Probably the principal reason that applications to the legislature for power to hold additional property are not more numerous from corporations holding exempt estates, may be found in the fact that the limitation can be largely and legally exceeded. An organization is permitted to hold one hundred thousand dollars by its act of incorporation; it expends that amount in the purchase of land and the erection of buildings. Its location being well chosen, its real estate advances in value, and in time is worth double its cost. By existing laws, this excess of one hundred per cent. over the amount it was authorized to hold cannot be taxed. If it is properly used in the service of the state, there is no reason why the whole amount should not be exempt for the same reasons which justified the original exemption; but of the justice or expediency of this additional immunity, the state should be the judge. The exemption granted by the legislature should always be deducted from the present value of the property, and any excess above the legal limitation taxed. Upon an application for an additional exemption, the question as to the amount of property necessary for the duties to be performed, the efficiency and economy manifested in the work, and the nature and character of the investments, would all be open to legislative inquiry and discretion.

Some corporations, exempt from taxation, have charters in which the limitation is based upon the annual income of their investments. It is difficult to see how such a provision can be termed a limitation, as applied to real estate occupied by the corporation. The discretion of the officers, and the wealth of the organization, is the measure of the restraint as to the area to be acquired. If used by the corporation for the purposes for which it was created, or in the form of vacant land not used at all, no income would accrue, and the limitation would be absolutely without force. (99 Mass. 599. 101 Mass. 319.) Such a form of exemption is unnecessary for any proper purpose. All charters of this character should be amended, and the discretion of the legislature as to the amount of property to be held free from taxation by its literary

and charitable organizations should be expressed in uniform terms. It would be a safe rule to refuse all charters to petitioners who were unwilling to either state unequivocally the amount of property they desired to hold, or to trust future legislatures with the question of the expediency of increasing their exemption.

For many years the state, it is believed, with only a single exception, has refused to permit portions of houses of religious worship to be used for secular purposes, without subjecting the proportion of the edifice so used, to taxation. (1857, c. 154. G. S. c. 11, § 5, clause 7.) All property, both real and personal, held by a religious society as a ministerial fund, is assessed at the full value. (Ib. c. 11, § 13.) The income of the stores under the church, or of the fund left by some benevolent parishioner, may be sacredly devoted to the maintenance of that worship, for the benefit of which the church itself is relieved from assessment. But the law refuses to look beyond the fact that the property is used for the purpose of producing an income, and orders its taxation.

A similar rule applies to the real estate of literary and charitable institutions, but not to their personal property,— that, whatever may be its character or use, is wholly exempt. (Ib. c. 11, § 5, clause 3.) It is not easy to perceive why this discrimination should be made, unless it is claimed that these corporations are of more benefit to the state than the church, or need, to a greater extent, its support and assistance. The rule of exemption for the religious society would seem to be the correct one, and should be applied to every corporation that occupies or uses property exempt from taxation.

If it is claimed that the assessment of the personal property of these corporations would impair their usefulness by diminishing their resources, and consequently their power to do the work they were chartered to perform, the correctness of the position must be conceded. By precisely the amount assessed, are the means of every person and corporation paying a tax diminished for all other purposes. When the state discontinued the exemption of the polls and estates of clergymen, of the presidents and professors of our colleges, and other public teachers,* the income of the institutions, with which they were connected, was reduced to the extent that the salaries of these officers were raised to meet their additional expense.

* Previous to 1821 the exemption of the polls and estates of these classes was for their full amount. By chap. 107 of the Acts of 1821, the exemption was not allowed to exceed eight thousand dollars, and in 1828 was removed altogether.

But because such an effect was produced, and will be repeated if the income-paying personal property of literary and charitable corporations shall be assessed, it does not follow that the repeal of the exemption was not then and would not now be right. If the contrary is claimed, by what reasoning can that action of the state be justified which exempts the income-paying personal estate of the academy or benevolent society and taxes that of the church,— which increases the usefulness of the college and hospital by the remission of a tax upon mortgages and bank stock, and decreases it by an assessment of the real estate from which an income is derived?

The pressure and discontent caused by the increased rates of local taxation in England, have caused the government of that country recently to give special attention to the subject. In a bill which was introduced as a reformatory measure, it was proposed to do away with all exemptions previously accorded to literary and charitable corporations, and tax for local purposes even the property of the government. Speaking for the ministry, the Hon. Geo. J. Goschen said: "We propose to take one intelligible and uniform system, and to render every hereditament, corporeal or incorporeal, liable to these burdens." "The effect of these proposals will be that government property will be rated; but the rule must be universal. We believe that the claims of government property to exemption are very considerable; and if claims are set up on behalf of municipal buildings, charities and the like, it must clearly be understood that it may be necessary for us to reconsider our decision on this point." (Report of speech in House of Commons on local taxation, April 3, 1871, p. 200.)

It is conceded, that so far as these corporations are doing the work of the state, their exemption from assessment is a proper exercise of power for the good of all. But it cannot be admitted, and will hardly be claimed, that any partial service entitles the organization, by which it is rendered, to total exemption; or, in other words, if one-half of the real estate of a corporation is used in the service of the public, and therefore exempt, that the other half, though used for other purposes, should be relieved from assessment as a payment for the services rendered by the first half. Remission from assessment can be granted only because the state does not intend to tax its own agencies. The Commonwealth pays its indebtedness by other methods than exemption from taxation.

By no existing law can the state, or its officers, know the character

or extent of the literary or charitable work of corporations receiving by exemption, an annual grant equal to the tax upon the property held by them. The state, consequently, does not know if the only condition that will justify exemption has been complied with. She cannot tell whether an organization, which confines its operations solely to the members of a single sect, is not protecting from assessment an ecclesiastical property largely exceeding in value the houses of religious worship, to which, for denominational purposes, her exemption was intended to be limited. Neither can the state know whether what purports to be a charity is not exercising a harmful, rather than a beneficial, influence on the community; or, if the work be of a character that would meet with approval, whether it is not being done at such a cost as to render a change of agencies needful.

By existing methods, a charter having been obtained, or an organization effected under general laws, no state supervision of any kind is ever exercised or expected. Such diversity of practice has grown up under our exemption laws, that estates claimed to be occupied for charitable purposes will, under precisely similar circumstances, be held for assessment in some localities, and relieved from all taxation in others. The state has the undoubted right to know how all who claim to represent her are doing the work they assume to perform. She has an equal right to accept services, and to reject or discontinue them. Existing for the good of the whole community, and seeking that end, she makes no contract by implication, and can be accused of no breach of faith when she holds her agents to strict account, or, discharging them from any position of trust or employment, withholds the compensation previously granted. But the power of the state should be exercised understandingly. She should know, by her proper officers, the nature and extent of the services rendered to the public by all who receive exemption as the agents of the Commonwealth, and the full amount and character of the property they hold.

It is therefore recommended that all literary and scientific institutions be required to annually report to the board of education, in such form as that body shall designate; that all benevolent and charitable corporations be required to make like returns to the board of state charities; that all these organizations make such returns of all property held by them as the tax commissioner may require; that all income-paying personal property held by these corporations be taxed; and in any year, when the returns are not made by any corporation, or when the

exemption of the property of any corporation has ceased, that the tax commissioner notify the local authorities to assess the real estate of such corporation. It is also recommended that all charters heretofore granted to literary or charitable corporations, where the limitation as to the amount of property is based upon the income of the estate, be amended in such a manner that the limitation shall state the amount of property that may be held. And, also, that all excess above the amount legally exempted, as determined by the market value of the property at the date of assessment, be taxed at the same rate as other property. (pp. 181–189.) * * *

Respectfully submitted,

THOMAS HILLS.

EXTRACTS FROM THE REPORT OF THE COMMISSION APPOINTED TO INQUIRE INTO THE EXPEDIENCY OF REVISING AND AMENDING THE LAWS OF THE COMMONWEALTH RELATING TO TAXATION.

October, 1897.

EXTRACT FROM THE REPORT OF THE COMMISSION APPOINTED TO INQUIRE INTO THE EXPEDIENCY OF REVISING AND AMENDING THE LAWS OF THE COMMONWEALTH RELATING TO TAXATION.

October, 1897.

Exempted Institutions.

We have heard extended arguments in regard to the present provisions of law which exempt from taxation houses of religious worship, and make large exemptions for literary, benevolent, charitable and scientific institutions. It has been represented that the exemption of houses of worship is inconsistent with the general principle of the separation of church and State, and does injury to the cause of religion. It has been suggested also that expensive houses of worship should be differently treated from those of more modest character. The exemptions extended to educational and charitable institutions are alleged to work hardship for some of the cities and towns in which the real estate of such institutions is situated, and some different modes of arranging the exemptions for such institutions have been brought to our attention.

We recommend no changes in existing legislation on these subjects. The general exemption of houses of worship is a fit recognition by the State of the sanctity of religion. So far as handsome and expensive houses of worship are concerned, we believe that no more objectionable and ineffective endeavor to reach the incomes of the rich could be devised than that of singling out for taxation the great churches and cathedrals which have been erected by the voluntary contributions of rich and poor alike, and which give evidence of a devout spirit, and of a just pride in its manifestation through beautiful forms. As regards educational and charitable institutions, the general principle of exemption has not been seriously questioned before us, and the only doubt has been as to possible hardship in its

operation in certain cities and towns. It is conceivable that cases of hardship might arise, but we have not been convinced that any have arisen in fact. At all events, no evils or inequities have appeared in such degree as to call for the intervention of the Legislature, or justify a departure from a long-settled principle. In some cases of apparent hardship we believe the real difficulty to lie in the general situation of a large part of the agricultural sections of the State, which we have described in another part of our report. The appropriate methods of improving that situation, and of lessening the burden of taxation in the agricultural towns, we have also considered elsewhere. * * * (pp. 75–76.)

Respectfully submitted,

JAMES R. DUNBAR.
ALVAN BARRUS.
T. JEFFERSON COOLIDGE.
F. W. TAUSSIG.

EXTRACT FROM THE MINORITY REPORT.

Exempted Institutions.

The Commonwealth, in order to encourage investment in vessels engaged in foreign trade, exempts the owners of such vessels from any tax save on the income from the enterprise, and then reimburses the towns where such ships are owned. While not favoring this exemption, I am of the opinion that the principle should apply to charitable and educational institutions. A college, university or other public building, with its ample grounds, may be an adornment to any city or town; but it is questionable whether the city where such institutions are located receives such revenue from the tax on the income and personal property of the professors and officers as would be received if the land was occupied for residence or manufacture. * * * (p. 152.)

Respectfully submitted,

GEORGE EDWIN McNEILL.

REMARKS OF PRESIDENT ELIOT OF HARVARD UNIVERSITY BEFORE THE RECESS COMMITTEE ON TAXATION, OCTOBER 23, 1906, WITH AN APPENDIX CONTAINING SOME EXTRACTS FROM PUBLIC DOCUMENTS.

REMARKS OF PRESIDENT ELIOT OF HARVARD UNIVERSITY BEFORE THE RECESS COMMITTEE ON TAXATION, OCTOBER 23, 1906, WITH AN APPENDIX CONTAINING SOME EXTRACTS FROM PUBLIC DOCUMENTS.

Mr. Chairman and Gentlemen of the Committee:—

There are two ways in this world to carry on the higher educational institutions; only two ways have ever been invented and successfully used. One way is by direct support of the Government. In various parts of the world all forms of government have used successfully that direct method of supporting the higher institutions of education. That can be done in this country — is done in this country. Most of the western states tax themselves heavily every year for the support of their universities and of their normal and technical schools. That is one method — the direct taxation method — always effective, and far the quickest for a new community. (See Appendix I.) The other method is the method which was used by the first settlers on this spot, the men who came over from England to Massachusetts Bay. You were informed this morning by rather a romancing historian that this method was invented in Massachusetts about the time of the adoption of the Constitution. Here is an error of more than a century. The charter given to Harvard College in 1650 contains a complete exemption of Harvard College "from all civil impositions," including exemption of its students and teachers from military service. Moreover, this policy of exemption is a part of the only other method — beside direct governmental support — of maintaining the institutions of higher education, namely, the endowment method. What is the essence of that method? It is nothing but offering an inducement to public-spirited, private persons to give their money, chattels, lands, or buildings for the public use called higher education. That is exactly what the settlers in Massachusetts

Bay offered. They offered the inducement to the public-spirited men and women who were ready to give their private money and property to the support of the higher education, that, if they did so, then such property should be forever exempted from assessment for other public uses. The Government of the Colony agreed that the moneys given by private persons for education should forever be exempted from assessment for other lower public uses, like highways, sewers, courts, and prisons. That is the entire meaning of the exemption,— private money set aside for public use shall not be assessed thereafter for lower public uses or any other public uses. (See Appendix II.)

How successful this policy has been in Massachusetts! The schools, the Normal Schools, Technical Schools, Colleges, and Professional Schools in Massachusetts, both for men and women, are unexcelled to this day in the United States. Harvard University is the largest, richest, and strongest university in this country at this moment, in spite of the fact that there are a dozen state universities which have their hands in the public treasury, and have had their hands in the public treasury, many of them, for more than a generation. Where did the Normal Schools begin? Right here in Massachusetts and in this State House, through a private benefaction. Massachusetts started them. Massachusetts has fed them. What state has as good a technical school as Massachusetts in the Institute of Technology? What built that? Private money, with the aid of the State,— exempted private money, because the State agreed that the money given for that great public use should not be charged for other lower public uses.

This, then, is the original, logical, and very productive Massachusetts policy with regard to the support of higher education. Now this doctrine and this practice have been accepted by every town in Massachusetts which has ever had occasion to consider the question, "Can we get a college or an academy, or a normal school into this town?" There never has been a town or city in Massachusetts that did not welcome these institutions of higher education. I had occasion last spring to refer to the fact that when it was proposed to establish one more normal school in Massachusetts, the Legislature, without waiting for the advice of the Board of Education which had asked for but one, established four new normal schools. Why? Because there was such a competition for that one normal school that

the Legislature found it more convenient to establish four. This, then, is a solid fact which I hope will be appreciated by the Committee, that this policy for the establishment and support of higher education has always, to this day, been believed in and accepted by the towns and cities of Massachusetts. As to Cambridge, the seat of Harvard University, the town gave the first land which the College occupied, and many times over during the first one hundred and fifty years repeated a gift of land to Harvard University.

Nevertheless, with the growing difficulties concerning taxation in general, difficulties which we all admit, difficulties which many of us hope this Committee is going to struggle with successfully, there has undoubtedly arisen a question about the incidence of this so-called burden, the exemption from taxation. Nobody doubts that the exemption policy of Massachusetts has been a fruitful and wise policy; but questions have arisen in many minds as to whether it would not be better, for example, for Massachusetts to vote annually — say — $500,000 a year as direct grants to the institutions of higher education rather than to give them this indirect advantage of exemption from local taxation. That might conceivably be a question, as Mr. McLeod said, of the incidence of taxation. Let me next discuss this incidence of taxation which is suspected to be unjust.

In the first place, I venture to ask your attention to the proposition that there is no burden whatever on the towns and cities which contain institutions of higher education,— absolutely none; no burden at all, but, on the contrary, enrichment and elevation for all the towns and cities in Massachusetts which have the happiness of containing these institutions.

I have heard to-day and on many days in past years the attention of Committees and Commissions on this subject called to the fact that in many of our towns and cities very large amounts of property are exempted for churches, colleges, technical schools, etc.; and these large sums are rolled off the tongue with great unction, and it sounds as if there were an argument somewhere behind the figures, namely, that these large exempted amounts involve some burden. For instance, there are $25,000,000 of property returned as exempted in the city of Cambridge. It sounds large. Then we are to consider that in thirty years more that sum will be $50,000,000 perhaps, and in one hundred years $100,000,000. It sounds as if the exemption of such large values were going to be a burden. Yet there is not,

and there will not be, one atom of burden on the city of Cambridge. To illustrate — Harvard University owns in one of the wards of Cambridge, called Ward 8, from 75 to 80 acres of ground, on which there is no taxation. But if Harvard University were not there, some one will say, there would be shops and houses all over those 80 acres, from which large taxes would be derived. In the first place, whether those 80 acres would have been profitably occupied with houses or shops is guess work. It is extremely doubtful if there would have been any more taxable houses or shops in Cambridge without the College than there are now with the College; for there is still much unoccupied land in the city, as in all Massachusetts cities and towns. But some things we do know. For example, we know that in Ward 8, where the College is, if you add to the exempted area of the College three times as much land all about this exempted area, and then take the average value of that total for taxation purposes, exempted area and all, one-fourth exempted and the other three-fourths taxed, you arrive at a higher average value of land than exists anywhere else in the City. Where is the burden? The city gets more taxes from that Ward 8 than from any other equal area in Cambridge, in spite of, or rather because of, the exemption. Is there any burden resulting from the exemption? On the contrary, the city of Cambridge has distinctly profited, so far as taxable values go, from the presence of Harvard University with its exempted area of 80 acres.

Secondly, I ask your attention to the effect of the exempted properties in different cities and towns of the Commonwealth on the rates of taxation in those towns. One would imagine, if the presence of exempted values were a burden, that the rate of taxation in towns and cities heavily burdened in that sense would be higher, distinctly higher, than in towns and cities that had no such exempted values, or had much smaller values exempted. If the exemption is a burden to the town or locality, surely large exemptions ought to result in higher tax-rates; because all towns and cities are struggling after comfortable conditions within their territory, and the tax-rate which they find themselves able to collect is presumably a rate which gives them the comfortable conditions they desire,— not everything they desire, of course, but a fairly comfortable mode of existence. Now, as a matter of fact, there is no relation whatever between the tax-rate of any city or town and the amount of property exempted therein for

churches, schools, colleges, technical schools, and charities. (See Appendix III.) I will compare together, in the first place, the city of Cambridge, which has a population of 97,000, and the city of Lowell, which has a population of 95,000. The assessable property in Cambridge in 1905 was $104,000,000. The assessable property in Lowell was $72,000,000, or nearly three-fourths of the assessable property in Cambridge. Let us look at that fact to begin with. It seems that Cambridge has more property per capita than Lowell; yet Lowell is full of great factories. That is in itself a favorable indication that Cambridge is on the whole pretty well off in regard to the amount of assessable property. This is not an isolated fact. In Amherst, Northampton, and Williamstown, three towns whose condition has been represented before the Committee as singularly unfortunate, the percentage of their taxable property to the taxable property in the counties in which they are severally situated is higher than the percentage of their taxable individuals to the total of taxable individuals in their respective counties. (See App. IV and VI.) But how about the exempted property in those two cities? In Cambridge there are exempted, according to the returns of the assessors, $25,000,000 and upwards. In Lowell there are only $3,000,000 exempted, less than an eighth part of the Cambridge exempted value. What a tremendous advantage Lowell must have, if the exemption is a burden. Is there any escape from that logic? If there is any connection at all between low exempted values and a low rate of taxation, what an advantage Lowell must have over Cambridge with exempted property of only about $3,000,000, when Cambridge has exempted property of about $25,000,000. What is the fact about the tax-rates? In Cambridge in 1905 it was $19, in Lowell $20; in 1906 in Cambridge it was $18.60, in Lowell it was $19.60. How, then, is it possible to believe that the exemption brings a burden upon the community where that exemption takes effect?

Let me compare two other places of about equal population, Amherst and Easthampton. Easthampton has rather more people. It has slightly more assessable property, almost $200,000 more; but Easthampton has only $584,000 exempted property, whereas unfortunate Amherst has nearly $3,000,000 exempted. This must be a tremendous burden on Amherst according to the theory we have heard here to-day. But what are the tax-rates? In Amherst it was $16.25 in 1905, and the same rate in 1906; in Easthampton it was

$17 each year, or higher than in Amherst. Does anybody suppose that Amherst does not live as well as Easthampton? Those who visit the two towns know better than that.

Now let us compare Williamstown with Provincetown, two towns approximately equal in population. Williamstown has about $3,000,000 of assessable property, and Provincetown nearly $2,000,000; but the unfortunate Williamstown has over $2,000,000 of exempted property, whereas the fortunate Provincetown has only $50,000 of exempted property. Some one said it was best to compare such figures in percentages. The exempted property in Williamstown is 70 % of the assessable property, whereas in Provincetown the exempted property is only 2½ % of the assessable property. What a great disadvantage Williamstown must be under! Yet the tax-rate in Williamstown in 1905 was $18.80, and in Provincetown $20; and in 1906 in Williamstown it was $18.70, and in Provincetown $19.50. Again the lower rates in the town where a college is situated, and which has exempted property amounting to 70% of its assessable property. It is a significant fact, considering the lamentable picture painted here of the condition of Amherst and Northampton, that both towns had tax-rates in 1904 lower than the average tax-rate in Hampshire County.

I will put this matter in one other form. Cambridge is said to have $25,000,000 of exempted property. Now suppose some benefactor or benefactors should give Harvard University to-morrow $20,000,000. Much of that sum would ultimately get into Cambridge as exempted property in buildings, collections, and apparatus; but the assessable property in Cambridge would not be diminished, but on the contrary much increased, because the University would be made richer and better and would have more teachers, students and workmen whose expenditures would increase the business done in the city and therefore its tax receipts. We are now looking for the great Gordon McKay bequest of $5,000,000, and we know some of that must go into such "plant." Now will the "burden" on Cambridge be increased when that Gordon McKay bequest comes in? Its assessable property will not be diminished. In what possible way will the "burden" of Cambridge be increased? In no way. On the contrary, there will be a larger, better equipped, more resorted to, educational establishment in Cambridge, and the city will receive an increase of the many benefits which it now derives from the University. (See Appendix V.)

I was anxious to make as clear as I could this proposition that the towns and cities in which there are large exemptions for churches, hospitals, colleges, etc., have absolutely no burden to bear,— none. That is the logic of the situation; moreover, it is the result of experience, the experience of Massachusetts since 1630.

I now want to touch upon some matters of detail which were referred to this morning by the advocates of this little bill. I am sure the Committee perceive clearly that this is a limited attack, on a small scale, on a principle and method of eminent significance and value; it is a petty attack on a principle which has made Massachusetts what it is. It is an attack on only three sorts of college property,— professors' houses, dormitories, and dining-halls. I have heard nothing said lately about taxing dining-halls; probably because a good many difficulties have occurred to the advocates of this measure in regard to taxing college, academy, and seminary dining-halls. The question was asked repeatedly this morning: 'Why not tax a professor's house or president's house if you tax a parsonage or priest's house? You do tax a parsonage or priest's house; why not tax, therefore, the president's house or the professor's house?" That is a fair question; but the answer is very plain. The parsonage or priest's house is not necessary to the church. A church can always get along very well without owning a parsonage. Indeed, it is a small minority of churches that own parsonages. On the other hand, it has been proved by experience, in many places and at many epochs, that it is necessary to the success of a college, academy, or seminary that there should be a house for the president or principal, and in some cases houses for the professors. For example, Tufts College, concerning which we had such a witty and wise piece of testimony this morning, could not have been established by any possibility on that bare, bleak, treeless hill, without building at the start a president's house and professors' houses. It was equally necessary to build a dormitory and a dining-room. The new institution could not be started without these provisions. That is one solid reason for exempting the president's or principal's house and professors' houses, when parsonages are not exempted. In some places this issue is a very small one to-day; in others it is vital. You need not hesitate, gentlemen, out of consideration for Harvard College, to force the Corporation to dispose of the five or six professor's houses they still own. They are burdensome pieces of property,

and are no longer needed for professors. They are desirable, however, for a few deans or other administrative officers. A house for the President still seems a necessity at Harvard, as at other similar institutions. I may add that, seeing this necessity, the poor Province of Massachusetts, in 1726, paid more than half the cost of building a handsome president's house at Cambridge. Are we going back on that, gentlemen? Is there a man here who would be willing to go back in these prosperous days on that act of the Province of Massachusetts in the time of its poverty?

There is another reason that parsonages and priests' houses are taxed, while presidents' and professors' houses are not. We, of course, ought to talk as plainly as possible here. The reason is that there is not so much consent or agreement on the expediency of maintaining the ministers of the different Protestant denominations, the priests of the Roman Church or the Greek Church, and the rabbis of the Jews as there is on the expediency of maintaining the colleges in all their functions. Most citizens think their own church is clearly an institution of public utility; but many are doubtful whether as much can be said for some other church or churches. This lack of consent on the public utility of all churches is the second explanation of the fact that parsonages are taxed in Massachusetts.

There was reference this morning to the athletic field of Smith College, and then some disparaging allusions were made to the athletic fields of Harvard and to their history and uses. Harvard's principal playground now lies in Boston, on the right bank of Charles River. It was the gift of an eminent citizen of this Commonwealth, who bought it with his private money, and gave it to the University. He bought an area contiguous to a large marsh which lay across the river opposite the residence of Longfellow, on Brattle Street, Cambridge. Longfellow loved the prospect from his windows, and wanted to have the marshes kept open forever for public enjoyment. So he and some friends of his bought those marshes and gave them to the University. Such were the honorable source of the great playground called the Soldier's Field. Why did Major Higginson make that costly gift to the College? For one thing, he believed in the doctrine that the Duke of Wellington preached, when he said that Waterloo was won on the playgrounds of Eton College. To emphasize his belief in that proposition Mr. Higginson put up on Soldier's Field a monument to some dear friends of his, all of whom

gave their lives to the country in the Civil War. Is there anybody in Massachusetts who would consent to the taxation of that Field? Is there anybody who does not believe that such fields are essential to the proper training of our educated young men for public service and private usefulness? But I have heard it said by the advocates of this little bill that $80,000 was taken on that Field in a single day from people who paid $2 apiece to witness a game of foot-ball. True, perfectly true; but where did that money go to, that $80,000? Did any of it go into a private pocket? No. Was any of it used except for the promotion of athletic sports at the competing colleges and the development of that Field? Not a dollar. The whole of that sudden receipt was consecrated to this public use of education,— of bodily education, if you please, an essential part of that education. It is moral education, too; for courage, public spirit, fidelity, and self-sacrifice are taught there. In short, we teach on that Field, through the acts of the Poet Longfellow and Major Higginson, what public spirit accomplishes. The Field itself is a striking illustration of Massachusetts public spirit, consecrating private property to noble public uses.

We had some playgrounds before the Soldier's Field. The first one I knew, now nearly sixty years ago, was a little triangle of ground which lies north of the College, between Cambridge Street and Kirkland Street, a small piece of ground, about two acres in area. That had sufficed the College for many, many years; but one day a committee of the subscribers to Memorial Hall wanted to put up that memorial to the services of Harvard graduates and students in the Civil War on that enclosure. Thereupon friends of the College raised money, and bought another field, farther to the north, a larger one, called Jarvis Field; in order that Memorial Hall might be built on the first playground of the College. It was suggested this morning that the athletic fields of to-day might, a hundred years hence or fifty years hence, be used for other purposes. On that account it was doubted whether they ought to be exempted from taxation. Taking the delta to the north of the present site of Harvard College as a sample of the former athletic fields of the University, and admitting that the University has grown great from small and poor beginnings, can one conceive of a better use of an old athletic field than to put Memorial Hall on it? Can any one of us conceive of taxing Memorial Hall or the enclosure in which it stands? Is that a con-

ceivable proposition in Massachusetts? It is a dining-hall in which young men eat at cost. They divide the total costs among themselves. There is absolutely no profit for anybody; there is no profit which can be applied to other public uses of the College. A poor boy can eat there for $2.80 a week, and a somewhat richer boy can spend $4 if he likes, and the careless boy can spend more. They are all free to spend what they wish or can afford. Where else can a vigorous young man feed himself sufficiently on $2.80 a week? I do not know any club, restaurant, or boarding-house where a man can live as cheaply as he can at Memorial Hall or Randall Hall. Is that a help to that newsboy who got a scholarship in Harvard College the other day, or not? He simply could not afford to go to Harvard College even with a scholarship without such help in procuring his food.

We heard a good deal this morning about institutions of learning that make a profit. We even heard once about making so much profit per student. I think Smith College was supposed to make a profit per girl, because the girls paid $8 or $9 per week for board and lodging. In such transactions there is no profit in the mercantile sense. If it does not cost quite $8 or $9 per week to lodge and feed the girls in Smith College, if some College house in the course of a year clears a little surplus of receipts over expenditures, every dollar of that surplus goes to a public use, goes into the work of Smith College. I hope that this misleading use of the word profit in connection with college receipts and expenditures will be observed by the Committee.

We even heard that the property of colleges in dormitories, dining-halls, and athletic fields was used for business purposes, the implication being that all business should be taxed. I want to illustrate the fallacy under that representation. Opposite the College Yard in Cambridge, across the street called Massachusetts Avenue, are two large contiguous brick buildings. They are both used mainly for the accommodation of students; but on the first story there are stores or shops and offices. Above are students' rooms. The entire net income of one of those buildings goes to a private person, the son of a gentleman who long lived in Cambridge and built up an honorable and successful business in Boston. The net income from the other building,— and you would not notice much difference between the two in position, quality, or use,— goes to Harvard University.

Now that second building is exempt from taxation, and the first is not exempt. Why? Because all the receipts from the second building go to a public use, the promotion of higher education, while the receipts from the first building go straight to a private use. That is the fundamental difference between what was here called money-making or a business carried on by a college, and money-making or a business in the same line carried on by a private person. In one case the net income goes to a public use, in the other to a private use. Exemption is given only when the whole net proceeds are applied to a public use. This is never true of an industrial or commercial establishment or of a transportation company. Such establishments are usually of advantage to the communities in which they are situated; but their net profits go to private uses.

Allusion was made in the remarks of the last speaker to the propriety of taxing students on their lodgings or their meals, because it would be a good lesson for students to pay taxes, and to know that they paid taxes, so that they should not grow up tax dodgers. Now, gentlemen, that rash suggestion carries us down to the very roots of the enormous subject which has been committed to you for study. What are the legitimate objects of taxation? Only productive things and persons and their products. The things which earn should be taxed for the support of public objects, unless the earnings are already devoted to a public object. Now these students in girls' colleges, boys' colleges, and technical schools are not earning anything. On the contrary, their time has been given up by their parents that they may study and so improve their power to earn. They are not yet legitimate objects for taxation of any sort.

I want to touch finally one general principle with regard to exemptions. We have learned,— I think the greater part of the population of Massachusetts has learned within the last ten years,— that reservations from taxation are not bad, burdensome, wasteful things, but on the contrary that they are highly profitable and precious things; and that the question really is not how few reservations a community can get along with, but how many they can indulge in. The long and short of it is, gentlemen, that the things which make it worth while to live in Massachusetts, to live anywhere in the civilized world, are precisely the things which are not taxed; the things exempted are the things which are in the highest degree profitable to the community. Just consider what our life would be without the exempted

institutions of Massachusetts, the colleges, museums, churches, schools, hospitals, courts, libraries, gardens, commons, parks, all the parks,— Boston's, Cambridge's, and the Metropolitan, and the parks of the Trustees of Public Reservations. Just think what our life would be if all these things were swept away. What would become of family life, of social life, of public enjoyment and private happiness? We get through these exempted institutions the joys and satisfactions and the upward tendencies which make life worth living. Let nobody persuade you for a moment that these invaluable reservations from taxation are a burden on the public; they are what make the common life worth living.

APPENDIX I

In the following states, appropriations, either State or City, were made during the year 1903–04 for the maintenance of institutions for higher education, including both current expenses and appropriations for buildings or other special purposes: —

California	$567,746
Colorado	140,000
Georgia	136,900
Illinois	630,200
Indiana	180,000
Iowa	285,500
Kansas	220,000
Michigan	448,525
Missouri	330,547
Nebraska	282,250
New York	308,203
Ohio	575,781
Pennsylvania	344,540
Texas	165,000
Wisconsin	471,500

These figures are taken from the report of the Commissioner of Education for 1904 and do not include appropriations for schools of technology.

APPENDIX II

EXTRACT FROM A LETTER WRITTEN BY PRESIDENT ELIOT DECEMBER 12TH, 1874, TO THE COMMISSIONERS OF THE COMMONWEALTH APPOINTED "TO INQUIRE INTO THE EXPEDIENCY OF REVISING AND AMENDING THE LAWS OF THE STATE RELATING TO TAXATION AND THE EXEMPTIONS THEREFROM."* (*House Doc. No. 15*, 1875, p. 369.)

The property which has been set apart for religious, educational and charitable uses is not to be thought of or dealt with as if it were private property; for it is completely unavailable for all the ordinary purposes of property, so long as the trusts endure. It is like property of a city or state which is essential for carrying on the work of the city or state, and so cannot be reckoned among the public assets; it is irrecoverable and completely unproductive. The capital is sunk, so to speak, just as the cost of a sewer or a highway is capital sunk. There is a return, both from a church or a college, and from a sewer or a highway, in the benefit secured to the community; but the money which built them is no longer to be counted as property, in the common sense. It can never again be productive, except for the purposes of the trust for which it was set apart.

When a new road is made where there was none, the State, or some individual, sacrifices the value of the land it covers, and the money spent in building the road. It also sacrifices the opportunity to tax, in the future, the improvements which might have been put upon that land if it had not been converted into a road, and all the indirect taxable benefits which might have been derived from the use for productive purposes of the land, and of the money which the road cost. When a church, or a college, or a hospital, buys land, and erects buildings thereon, the State does not sacrifice the value of the land, or the money spent upon the buildings; private persons make these sacrifices; but the State does sacrifice, by the exemption statute, the opportunity to tax, in the future, the improvements which might have been put upon that land if it had not been converted to religious, educational or charitable uses, and all the indirect taxable benefits which might have been derived from the use for productive purposes of the land, and of the money which the buildings cost.

This is the precise burden of the exemption upon the State. Why does the State assume it? For a reason similar to, though much stronger than, its reason for building a new road, and losing that area forever for taxation. The State believes that the new road will be such a convenience to the community, that the indirect gain from making it will be greater than the direct and indirect loss. In the same way the State believes, or at least believed when the exemption statute was adopted, that the indirect gain to its treasury which results from the establishment of the exempted institutions is greater than the loss which the exemption involves. If this belief is correct in the main, though not perhaps universally and always, the exemption can hardly be properly described as a burden to the State at large.

* See above, pp. 21–45.

The parallel between a sewer or a highway, on the one hand, and land and buildings of exempted institutions, on the other, may be carried a little farther with advantage. The abutters often pay a part of the cost of the sewer or the highway which passes their doors, because it is of more use to them than to the rest of the inhabitants, and the members of the religous, educational or charitable society erect their necessary buildings and pay for their land themselves. If it be granted that the religious, educational or charitable use is a public use, like the use of a sewer or a highway, there is no more reason for taxing the church, the academy or the hospital, than for annually taxing the abutters on a sewer or a highway on the cost of that sewer or on the cost of the highway and its value considered as so many feet of land, worth, like the adjoining lots, so many dollars a foot. The community is repaid for the loss of the taxable capital sunk in the sewer by the benefit to the public health, and the resulting enhancement of the value of all its territory. In like manner, it is repaid for the loss of the capital set apart for religious, educational and charitable uses, by the increase of morality, spirituality, intelligence and virtue, and the general well-being which results therefrom. To tax lands, buildings, or funds which have been devoted to religious or educational purposes, would be to divert money from the highest public use,— the promotion of learning and virtue,— to some lower public use, like the maintenance of roads, prisons or courts, an operation which cannot be expedient until too large an amount of property has been devoted to the superior use. This is certainly not the case in Massachusetts to-day. The simple reasons for the exemption of churches, colleges and hospitals from taxation are these: first, that the State needs those institutions; and secondly, that experience has shown that by far the cheapest and best way in which the State can get them is to encourage benevolent and public-spirited people to provide them by promising not to divert to inferior public uses any part of the income of the money which these benefactors devote to this noblest public use. The statute which provides for the exemption is that promise.

APPENDIX III

COLLEGE TOWNS HAVE NO HIGHER TAX-RATES THAN NON-COLLEGE TOWNS

	1905 Population[1]	1905 Assessable Prop.[2]	1905 & 1906 Tax Rate[2]		1905 January 1 Exempted Prop.[3]
Cambridge	97,434	$103,845,600	$19.00	$18.60	$25,377,063
Fall River	105,762	81,754,247	18.80	18.40	2,764,000
Worcester	128,135	120,865,502	17.00	16.60	5,922,900
Lowell	94,889	71,632,643	20.20	19.60	3,119,751
Lawrence	70,050	46,235,468	16.80	16.00	1,529,625
Springfield	73,540	80,904,477	15.40	15.00	3,619,193
Lynn	77,042	56,157,073	18.40	17.00	1,515,100
New Bedford	74,362	64,349,661	19.40	18.40	2,436,860
Amherst	5,313	3,599,900	16.25	16.25	2,909,099
Ware	8,594	4,398,210	19.70	18.00	214,074
Easthampton	6,808	3,781,772	17.00	17.00	583,735
South Hadley	5,054	2,529,372	21.00	16.50	1,553,850
Northampton	19,957	12,739,859	17.00	16.50	4,416,607
North Adams	22,150	14,862,527	22.00	20.00	847,000
Pittsfield	25,001	18,330,223	18.50	18.50	1,446,754
Medford	19,686	21,240,150	21.40	20.20	1,119,700
Andover	6,632	5,902,668	16.00	17.50	1,873,061
North Andover	4,614	4,462,302	17.50	18.00	64,200
Methuen	8,676	5,178,157	19.30	19.00	118,050
Amesbury	8,840	5,346,227	17.70	18.80	382,692
Saugus	6,253	4,555,686	18.70	19.80	77,358
Danvers	9,063	5,341,280	18.00	19.20	234,608
Rockport	4,447	3,051,252	21.00	18.00	67,000
Williamstown	4.425	3,035,747	18.80	18.70	2,120,203
Lee	3,972	1,918,865	18.32	18.05	59,725
Dalton	3,122	3,017,700	14.70	15.70	93,650
Provincetown	4,362	1,928,920	20.00	19.50	50,000
Monson	4,344	1,698,168	16.20	17.00	245,613
Belmont	4,360	5,602,650	19.90	18.00	1,664,629
Lexington	4,530	5,957,670	20.40	19.00	131,950
Needham	4,284	4,503,731	18.00	18.50	76,455
Warren	4,300	1,762,743	21.50	19.60	105,300

[1] Massachusetts census of 1905.

[2] Massachusetts Public Document No. 19 of 1905; official returns on file with the Secretary of the Commonwealth.

[3] Report of Massachusetts Tax Commissioner, for the year ending December 31, 1904.

APPENDIX IV

IN COLLEGE TOWNS THE PERCENTAGE OF THEIR TAXABLE PROPERTY TO THAT OF THE WHOLE COUNTY IS HIGHER THAN THE PERCENTAGE OF THEIR TAXABLE INDIVIDUALS TO THE NUMBER OF TAXABLE INDIVIDUALS RESIDING IN THE COUNTY

City or Town	County	Tax Rate per $1000	Average Tax Rate of County per $1000 of Assessable Property	Average Tax Rate of County outside City or Town in Tabulation per $1000 of Assessable Property	Percentage of Taxable Individuals Residing in County	Percentage of Population of the County	Percentage of Taxable Property in County
Amherst	Hampshire	$16.25	$17.04	$17.21	8.84%	8.54%	10.01%
Northampton	Hampshire	17.00	17.04	17.21	30.53%	32.07%	35.46%
Williamstown	Berkshire	18.80	18.03	18.00	4.17%	4.50%	4.44%
Cambridge	Middlesex	19.00	18.34	18.19	15.17%	16.01%	18.21%
Andover	Essex	16.00	16.80	16.81	1.57%	1.74%	1.92%

Compiled from Public Document No. 19 of 1905

APPENDIX V

TAXED AND UNTAXED LODGINGS FOR STUDENTS OF THE CAMBRIDGE DEPARTMENTS OF HARVARD UNIVERSITY IN 1866–67 AND IN 1906–07

(RADCLIFFE COLLEGE NOT INCLUDED)

	In College Halls (untaxed)		In Private Halls (taxed)		In private houses (taxed)		Not lodging in Cambridge		Totals	
	1866–67	1906–07	1866–67	1906–07	1866–67	1906–07	1866–67	1906–07	1866–67	1906–07
Undergraduate departments.										
Harvard College and the Lawrence Scientific School	309	707	13	883	145	537	13	325	480	2452
Graduate departments.										
Graduate School of Arts and Sciences and Graduate School of Applied Science	1	110	1	29	6	192	..	85	8	416
Divinity School	12	16	..	2	1	16	2	5	15	39
Law School	8	123	1	162	129	338	19	69	157	692
Totals	330	956	15	1076	281	1083	34	484	660	3599

(From the annual Catalogues of Harvard University)

This table shows that there are now 2159 students in taxed lodgings in Cambridge against 296 in 1866–67, or more than seven times as many as in 1866–67.

Of the 3599 students now in the Cambridge departments as above about 2000 get their meals in Memorial Hall and Randall Hall, including many who do not lodge in Cambridge. Making allowance for those who take no meals in Cambridge, there remain about 1300 students who get most of their meals in restaurants and houses taxed in Cambridge, or twice as many as boarded in Cambridge in 1866–67. The laundry work of nearly 3000 students is also done now in taxed houses and shops in Cambridge, whereas in 1866–67 there were only 626 students to offer that kind of employment to Cambridge residents.

The obvious inference from the above figures is this — to increase the benefits which an educational institution confers on the town in which it is situated, the best way is to make the institution itself better and stronger so that it may always be getting more and more teachers, students, and employees.

APPENDIX VI

EXEMPTION DOES NOT DIMINISH THE VALUE OF TAXABLE REALTY IN COLLEGE TOWNS AS COMPARED WITH OTHER TOWNS

THE FIGURES ARE FOR 1905

Town	Population	Value of Taxable Real Estate	Per Capita Value of Taxable Real Estate	Tax Rate
Cambridge	97,434	$87,851,500	$901.60	$19.00
Fall River	105,762	50,219,900	474.80	18.80
Worcester	128,135	95,669,850	745.80	17.00
Lowell	94,889	57,208,845	602.90	20.20
Lawrence	70,050	36,224,000	517.10	16.80
Springfield	73,540	63,273,330	860.30	15.40
Lynn	77,042	46,130,000	598.70	18.40
New Bedford	74,362	40,293,975	541.80	19.40
Somerville	69,272	53,392,000	770.70	18.30
Amherst	5,313	2,726,060	513.00	16.25
Ware	8,594	3,338,805	388.50	19.70
Easthampton	6,808	2,834,380	416.30	17.00
South Hadley	5,054	2,144,710	424.30	21.00
Northampton	19,957	10,231,750	512.70	17.00
North Adams	22,150	12,065 012	544.60	22.00
Pittsfield	25,001	13,813,825	552.50	18.50
Medford	19,686	18,393,550	934.30	21.40
Cambridge	97,434	87,851,500	901.60	19.00
Somerville	69,272	53,392,000	770.70	18.30
Malden	38,037	25,128,200	660.60	17.20
Everett	29,111	19,951,150	685.30	17.80
Chelsea	37,289	22,497,950	603.30	19.00
Medford	19,686	18,393,550	934.30	21.40
Revere	12,659	11,888,600	939.10	22.00
Williamstown	4,425	2,680,575	605.80	18.80
Adams	12,486	3,557,875	285.00	18.00
North Adams	22,150	12,065,012	544.60	22.00
Dalton	3,122	1,621,581	519.40	14.70
Great Barrington	6,152	3,767,890	612.40	13.50
Lee	3,972	1,424,438	358.60	18.32

EXTRACT FROM THE REPORT OF THE JOINT SPECIAL COMMITTEE ON TAXATION APPOINTED TO CONSIDER THE EXPEDIENCY OF LEGISLATION IN AMENDMENT OF OR IN ADDITION TO THE GENERAL LAWS RELATING TO TAXATION.

JANUARY, 1907.

TAXATION OF PROPERTY OF EDUCATIONAL INSTITUTIONS.

Senate Bill, No. 382, which was referred to this committee, provides for certain amendments to the present law exempting from taxation the property owned by educational institutions. The specific reference of this bill, together with the power granted to the committee to recommend amendments of or additions to laws relating to the assessment and collection of taxes, enables the committee to consider the college taxation question in its entirety.

The agitation of this question is not new in Massachusetts. There have been previous attempts to induce the General Court to change the existing law. These different attempts have been varied in their scope, but similar in that each has sought to bring into the treasury of the communities in which the institutions are situated a revenue from real estate now exempt from taxation. The bill referred to this committee provides that "real property, owned and occupied by any college or university, or by any scientific institution authorized to grant degrees, which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories, shall not be exempt from taxation." The terms of this bill are simple, and do not attempt to bring into the taxable lists property used as recitation or assembly halls, laboratories or gymnasia. But this bill, restricted as it is, would make a great change in the policy which Massachusetts has maintained since colonial times towards her educational institutions.

The advocates of a change in this long-established policy are not as a rule unfriendly to our system of higher education. Their belief is, however, that under present conditions there is imposed upon certain communities a heavy burden by the exemption from taxation of large amounts of property owned by these institutions. They see many acres of land acquired by the colleges, and thus removed from the taxable lists. Upon this land they see costly buildings erected, or athletic fields laid out whereon are held games which bring in large amounts of money. It is evident to them, as to any one, that were all or any part of the property now owned by the colleges to be subject to taxation there would be an immediate decrease of the taxes upon the other property in the community. It seems to your committee, however, that this question should be considered somewhat more broadly than with reference to its possible effect upon particular communities.

Our forefathers evidently believed that colleges and universities served a public purpose. Their descendants have continued in that belief. Upon no other ground could our laws providing for the exemption of their property from taxation have been upheld by our courts. Exemption from taxation, then, has been the method by which Massachusetts has aided her educational institutions. There is another method which has been tried successfully in other parts of the United States; that is, the method of making appropriations for colleges from the State treasury. Many of the States contribute annually for this purpose hundreds of thousands of dollars. Massachusetts appropriates nothing, and yet the amount of the aid she extends to her colleges is large. We do not believe the people of Massachusetts desire to give to the colleges less aid than they are now giving. Any change in our laws by which the colleges would be required to pay taxes upon any part of their property would serve to decrease the amount of the aid they are now receiving and would be a tax upon education.

To increase its expenses by the imposition of taxes would make it necessary for the college to increase its income or to decrease its expenses. It could raise the tuition charged to the students, or it could lower the character and the cost of the instruction it offered and decrease the lines of its activity. Neither one of these alternatives is desirable. The character of the instruction existing in the colleges

of Massachusetts has helped to make them among the foremost, if not the leaders, of the educational institutions of the country. They hold a position in the educational world of which we are all proud, and which we desire them to maintain. None of their activities should be curtailed. Their athletic games, under proper restrictions, should be encouraged. Students should take more rather than less part in healthful forms of physical exercise. The dormitory system should be continued. Some oversight of the students upon the part of the college authorities is necessary. Parents are unwilling to send their daughters into strange communities, to room where they may, free from restrictions, with no one responsible for their discreet conduct. In the colleges for women especially, and to a large extent in all colleges, dormitories are essential to the students and to the maintenance of the institutions. The college dining halls give board at prices lower than are charged elsewhere, and enable students to attend college who would otherwise be unable to meet their expenses. Every function now performed by the colleges is justified, and should not be interfered with. It is our boast that the poorest boy or girl, possessing no more than average ability, can secure a college education in Massachusetts. The number of poor students attending our colleges is large. To increase even to a small extent their expenses would be to take from many of them the opportunity and even the hope of a college training. The taxation of college property in Massachusetts must inevitably tend to drive from the colleges of this Commonwealth many worthy students, and make the colleges schools exclusively for the well-to-do or the rich.

The liberal policy that Massachusetts has maintained toward her educational institutions has been a large factor in bringing to them numerous gifts and endowments. We are forced to believe that men and women will be reluctant to devote their fortunes to educational purposes if they know that some part of their property is to be used for the construction of roads, the maintenance of the public schools, or for any other of the proper activities of our municipalities. It seems to us eminently wise that Massachusetts shall continue to say to every one, "Give to our colleges of your fortune; all of its income shall be forever devoted to the purposes to which you have dedicated it."

Though many of the colleges of Massachusetts have large endow-

ments and own property of great value, not one of them is beyond the need of still greater possessions. We know of no college in Massachusetts which receives an income sufficient for its expenses. There may be an apparent "profit" from dormitories or athletic fields or dining halls, but there is no "profit" from any student; the per capita cost of instruction is twice and often three times the amount collected as tuition from the student. The use of the word "profit" in this connection is inexact. The manufacturer who finds that the surplus created by one department of his business must be used in operating another department, and that the expenses of all the departments are greater than the income they bring to him, lacks courage to use the word "profit." Whatever surplus may appear from the income of the dormitories or of the athletic fields is applied to educational uses by the college. In no case do we find that, as a result of all the educational activities of any college in the Commonwealth, is there a surplus; there is always a deficit.

So strong is the conviction in our minds that our colleges deserve all the aid we now give them, that we cannot recommend any legislation which would require from the colleges themselves any contributions to the public revenues.

But there remains for our consideration the college town. Many conscientious citizens of the Commonwealth believe that the presence of a college and the ownership by it of large amounts of property exempt from taxation impose upon the community in which it is situated a serious financial burden. They approve of the principle that we should aid our educational institutions, but they believe the whole Commonwealth should bear the burden, rather than that it should rest upon a few communities. They ask that the college towns shall be reimbursed from the treasury of the Commonwealth in amounts equal to taxes upon the exempted property. If college towns are subjected to unusual burdens and do not receive commensurate benefits because of the location of an educational institution within their limits, then we believe they should be reimbursed by the State. The philanthropy of Massachusetts is indeed unworthy of commendation if it is bestowed at the expense of a few municipalities.

Towns have not always considered the presence of an educational institution a burden. Northampton appropriated $25,000 to have Smith College located in that city. In 1863 Amherst, which had been

a college town for nearly fifty years, gave what was for her an enormous sum — $50,000 — to secure the location within her borders of the Massachusetts Agricultural College. Within recent years we have seen towns of the State in active and even bitter strife to secure for themselves State normal schools. Evidently the towns have not considered the presence of these institutions a burden. We are but little concerned with the question as to what benefits of an æsthetic or intellectual nature the college towns may receive because of the presence of the college. We believe these benefits are great, and that the citizens unwillingly would be deprived of them. But it is clear to us that the question for the Legislature to consider is largely a question of dollars and cents.

We may observe in this connection that the desire for lower taxes is not confined to college towns,— it is a desire which finds expression in nearly all communities. It is caused by the fact that taxes in Massachusetts have increased materially within the last few years. In 1878 the average per capita tax was $12.24; in 1904 it was $18.36.

In some of the college towns we find that a very large proportion of the assessable property is owned by educational institutions, and is therefore exempt from taxation. In Amherst there is exempted property to the value of $2,909,099, while taxes are assessed upon property valued at $3,599,900. In Williamstown the corresponding figures are $2,120,203 and $3,035,747; in Northampton, $4,416,607 and $12,739,859; in Cambridge, $25,377,063 and $103,845,600; in South Hadley, $1,553,850 and $2,529,372. Despite these facts, all these communities appear to be prosperous; in none of them is the tax rate abnormally high; none of them have debts above the average, or that can in any way be charged to the presence of the college. In fact, the financial conditions of all the college towns are as satisfactory as those found in the great majority of our communities. The tax rate is not an infallible guide, but it is fairly indicative of the tax burdens resting upon the inhabitants. In Amherst the tax rate for 1906 was $16.25; in Williamstown it was $18.70; in Northampton it was $16.50; in Cambridge it was $18.60; in South Hadley it was $16.50. These rates are in no case excessive; they are somewhat less than the tax rates in other cities and towns which might be properly compared with them. We find that the net debts of these municipalities at four different periods were as follows: —

	1872.	1875.	1878.	1905.
Amherst,	$127,000	$179,500	$171,700	$83,213
Williamstown,	44,982	40,450	35,580	52,000
Northampton,	424,000	663,779	613,625	606,038
Cambridge,	1,856,400	4,280,400	3,920,319	7,217,224
South Hadley,	5,500	15,000	62,852	37,411

The debt of Cambridge shows a large increase, but this is explained by facts in no way related to the presence of Harvard University. A majority of the cities and towns in the metropolitan district show a similar increase. So far as we may judge by the tax rates and the debt accounts, the college towns appear to be in no less satisfactory condition than are other municipalities of the Commonwealth.

The presence of an educational institution does remove large amounts of property from the tax lists, but there are distinct and easily discerned financial benefits which compensate for the loss of taxes. The presence of a college increases the value of taxable property surrounding it. Thus in Ward 8 of Cambridge, in which ward is situated Harvard University, the value of the property actually taxed exceeds the value of the property in any ward in the city of equal area. Real estate values in every college community are larger upon property adjacent to the colleges than upon similar property located elsewhere within the community. The colleges serve to increase the population of the communities in which they are situated, not only by the number of the students in attendance, but also by the number of people who are attracted to the town in order to sell to the students lodgings, board and merchandise of various kinds, and whose income is derived largely from the students. The amounts of money expended by students in college communities cannot be stated in actual figures, but these amounts are large. There are about most of the colleges thriving business enterprises which derive a large part of their incomes from the students and employees of the colleges. The extent to which these businesses are dependent upon college patronage is shown by the fact that many of them close during the summer. All of these factors contribute to the prosperity of the community and increase the value of the taxable property. It seems clear to us that this increase at least equals the amount lost by the exemption from taxation of college property.

From our investigations of this subject we are convinced that the presence of an educational institution imposes no financial burden.

upon the community which is not balanced by adequate compensating financial benefits. We are therefore unable to recommend any system of reimbursements to the towns by the Commonwealth.

It has been suggested that the meaning of the present statutes relating to this subject can be made clearer. We do not believe it is wise to attempt to amplify the present laws. The principle laid down in them is sufficiently explicit. The application of this principle to specific cases is not the concern of the Legislature; that is a matter for the determination of the courts. The decisions of the courts appear to be clear. Thus, in the case of Williams College *v.* Williamstown, 167 Mass. 505, the court says: —

> The real estate must be occupied by the corporation, or its officers, for the purpose of carrying into effect the purposes of the corporation.

In the case of Phillips Academy *v.* Andover, 175 Mass. 118, the court says: —

> It is not easy, and perhaps not possible, to define what will constitute occupancy under all the circumstances, and we shall not attempt it.

If the court believes that each case should be decided with reference to particular conditions, we hesitate to undertake to establish general rules.

The intent of our laws relating to this matter is understood. There are numerous decisions of the courts to which assessors may refer, and new contentions that may arise will be adjudicated as are all questions of dispute under our statutes,— by the court of competent jurisdiction.

The General Court should hesitate long before it places any burden, however slight, upon any of the educational institutions of this Commonwealth. Our forefathers taxed themselves heavily for the maintenance of schools and colleges. It is in our judgment entirely foreign to the spirit of our whole educational system and to our conception of civic righteousness that we should now tax these institutions for the maintenance of other public activities. Nor should the Commonwealth allow individual communities to reap the undoubted financial benefits consequent upon the presence of a college, and be reimbursed by the State for the loss of its taxes. As long as there is no great discrepancy between the taxes lost and the financial benefits

received, the college communities may well be content with the existing law. The advantages they derive of a nature other than financial are a net gain, and are such that the communities which receive them are the envy of less fortunate municipalities. (pp. 52–71.)

GEORGE H. GARFIELD.
FRANK M. CHACE.
ELMER A. STEVENS.
JOHN F. CUSICK.
WILLIAM TURTLE.
THOMAS W. WILLIAMS.
WILMOT R. EVANS, Jr.
HENRY S. AMES.
CHARLES A. ANDREWS.
CLARENCE J. FOGG.
WARREN E. TARBELL.
CHARLES V. BLANCHARD.
JULIUS MEYERS.
JOHN QUINN, Jr.
EDWARD C. CREED.

SUPPLEMENTAL REPORT UPON THE TAXATION OF COLLEGE PROPERTY.

The principle laid down in 1650 by the early fathers, when they exempted from taxation property owned by institutions for the encouragement of higher education, are principles which should be continued in this Commonwealth. We rejoice that it was in the Bay Colony that this principle of exemption was first initiated on this continent, and that Massachusetts can claim the honor that her early settlers were its originators. To-day, after a lapse of two hundred and fifty years, we are as willing as were the fathers of old to give assistance to our educational institutions. We believe unreservedly in the exemption from taxation of real and personal property of literary, benevolent and charitable institutions. We do not doubt that they confer upon the communities where they are located great blessings and benefits.

Yet we dissent from the report of a majority of the committee that no legislation should be enacted relating to the subject of the exemption from taxation of property owned by this class of institutions. We are convinced that the principle, which we believe to be wise and with which we are in accord, has been abused by certain colleges to such an extent that further law is now necessary. Instances of this abuse are found in the ownership by certain colleges of residences occupied by the president, professors or instructors, and which are used chiefly for purposes other than those for which the institutions were established. It seems to us that in those cases where the college owns a residence occupied by its president or one of its professors taxes should be assessed to the college upon that property. Such residence is used for the purposes of the college corporation, if at all, only in a secondary way. Colleges were not established to furnish residences to individual citizens, even though such citizens are officers of the college; they were established to help educate our young men and women. Athletic fields and dining halls are instances of other kinds of property which, exempt from taxation, yet furnish to the college a large revenue above the cost of their maintenance. It seems to us proper that taxes should be paid upon property of this class.

Conditions of to-day are much altered from the conditions existing when our principle of exemption was established. Then the amount of property owned by the colleges was small; now it is very large. Amherst, Williamstown, Andover, Northampton and Cambridge are towns in which large parts of the most valuable property are owned by educational institutions, and the property so owned is a source of no revenue to the municipality. As we have said above, we do not desire to impose burdens upon the college in the way of taxes upon the property which is used chiefly for educational purposes. We would have them taxed only for that property which they own and rent for private use, and for that property which furnishes them a profit.

We cannot believe, however, that it is wise or fair for Massachusetts to place upon the college town all the burden resulting from her exemption laws affecting college property. In the municipalities we have mentioned above, and in other cities and towns to a lesser degree, the amount of property exempted from taxation is a very large part of the total property in the community. It is such a large proportion of the whole that the owners of the taxed property find themselves re-

quired to pay taxes much in excess of their fair proportion, as measured by the value of their property compared with the value of all property in the town. Massachusetts gives aid to her educational institutions by exempting them from taxation. Why, then, should not Massachusetts bear this burden of exemption herself? Why should it all be borne by a few cities and towns? It is well within bounds to say that college property to the value of $65,000,000 is exempt. At a rate of $17, the taxes lost upon this property amount to $1,105,000. This measures the aid granted to our educational institutions. It also measures the burden which the generosity of Massachusetts places upon a few of her cities and towns. We recognize that a college brings benefits to the town where it is located. Some of these benefits are undoubtedly financial. But we cannot believe that the financial benefits conferred are equal to the burdens imposed. It is entirely possible to determine the net burden of any city or town. This net burden should be at once assumed by the Commonwealth.

If the municipalities are allowed to levy taxes upon parts of the property of our educational institutions, as proposed herein, and if the net burden imposed by the presence of a college is assumed by the State, Massachusetts will have corrected what appear to us to be serious faults in her present system of exemption. The cost to the colleges will be so small as not seriously to embarrass them, while the citizens of individual municipalities will be relieved of a burden which has been unwisely placed upon them. (pp. 90–92.)

JULIUS MEYERS.

The following table gives for seven years the value of exempted property owned by educational institutions in certain cities and towns of the Commonwealth:—

	1900	1901	1902.	1903.	1904.	1905.	1906.
Amherst	$2,679,654	$2,607,387	$2,747,601	$2,817,843	$2,799,599	$2,778,440	$2,852,413
Andover	1,552,745	1,488,901	1,829,459	1,872,678	1,753,861	1,779,435	1,896,414
Cambridge, ...	16,898,540	18,446,979	19,992,089	20,580,299	22,296,575	23,997,120	25,195,610
Medford, ...	795,350	766,030	731,630	966,885	986,862	862,072	3,878,050
Northampton, . . .	2,809,556	3,031,346	3,781,813	3,457,412	3,601,946	3,612,823	3,689,939
South Hadley . . .	950,775	700,000	575,100	1,364,350	1,485,650	1,639,311	1,757,378
Wellesley, ...	1,819,296	2,147,700	2,231,800	2,572,925	2,679,521	2,783,541	2,923,865
Williamstown, . . .	1,452,055	1,601,229	1,966,312	2,030,752	2,008,953	2,042,020	2,618,486

REMARKS OF CHARLES W. ELIOT, PRESIDENT OF HARVARD UNIVERSITY, BEFORE THE JOINT COMMITTEE ON TAXATION, MASSACHUSETTS LEGISLATURE.

March, 13, 1907.

The advocates of the several measures proposed for taxing colleges use as one argument in support of their proposals an alleged ambiguity in the present statute, an ambiguity which has given rise to litigation. If there be any ambiguity in the present statute, the opponents of the new legislation would be glad to have it removed; so that the intention of the Legislature to exempt from taxation institutions of religion, education, and charity may be expressed with perfect clearness. It is hard to see, however, how language can be plainer than the language of the exemption statute. Proposals to change the statute, or to reduce the field of its operation, are not properly described as proposals to remove ambiguity from the statute. Moreover, the proposed new acts contain the very phrase over which litigation has arisen, "occupied by them or their officers for the purposes for which they are incorporated." The courts have repeatedly been called upon to define the meaning of that term, "the purposes for which they are incorporated." Senate Bills Nos. 53, 54, and 224 retain this clause. House Bill No. 474 does not contain that phrase, because that bill relates solely to the repayment by the Commonwealth of one-half of any tax assessed by a city or town on an educational institution. Moreover, Senate Bill No. 54 introduces a new phrase which will be sure to give rise to extensive litigation. It declares that "property owned and occupied by any college or university, or by any scientific institution authorized to grant degrees, which is used or appropriated, wholly or in part, for residential, commercial, or mercantile purposes, or for dormitories, shall not be exempt from taxation." What are the commercial or mercantile purposes of a college, or university, or technical school? There are none. At Harvard University, for

instance, there are no such purposes in any proper sense of those terms. Commercial or mercantile purposes invariably involve the application of a profit to private uses. Every man or corporation engaged in commerce, manufacturing, or trade is looking for a personal or private profit on every transaction. If he is not seeking that profit, he is not in business.

Letting College Rooms not a Commercial Transaction.

During the hearing on last Thursday, we several times heard the letting of rooms to students described as a commercial transaction on the part of a college. This description is obviously incorrect. It is not a commercial operation for a college to let rooms to students; because there is no profit whatever in it for any private individual. If, for the college itself, there is ever a balance of receipts over expenses on a dormitory, every dollar of that balance is applied to the public use of teaching. We also heard of the Harvard Coöperative Society as carrying on an untaxed mercantile business in competition with taxed shops about Harvard square. I am glad to explain the case of the Harvard Coöperative Society; because it perfectly illustrates the real principle which underlies this whole subject. The Harvard Coöperative Society was formerly a society confined to members of the university, and intended to enable them to buy such goods as they needed — clothing, stationery, shoes, bats and balls, brushes, soap, etc.— for less money than they could be bought for in the ordinary retail shops. There was no profit to any individual connected with it, except this advantage of buying good articles at lower rates than were elsewhere procurable. It was an aid or a facility for students in getting an education, exactly like the college dining-hall which yields no profit to anybody concerned, but enables students to buy their food cheaper than would otherwise be possible. A few years ago it was thought expedient to incorporate the Harvard Coöperative Society, and to carry on a general business, not for students only, but for all comers. Up to that time, the Society had occupied a college building which was not taxed. As soon as it was incorporated, the Society bought from a private person the large building on the opposite side of Harvard Square, where its excellent business is now conducted; but on that building, and its other property, the Society pays taxes just like any other

shop in Cambridge. In other words, so long as its business was confined to members of the University, and offered them, and them alone, a pecuniary advantage in buying the necessaries of student life, it was exempt from taxation; but the moment it did a general business open to everybody, and conducted under the general incorporation law, it became subject to taxation; it had ceased to be purely an aid to students in getting their education.

Exemption is Based on Application of Income to a Public Use.

I cannot too strongly insist that in the ordinary mercantile sense there is never any "profit" on the operations of a college, university, or technical school. It is confusion with regard to the use of this word "profit" which explains the presentation of many of the fallacious arguments I have heard this year and in many former years before committees of the Legislature examining the question of college exemptions. Every source of income of a college or university may be described in some inexact or ill-considered sense as yielding a profit; but every source of income in an institution of education, religion or charity, has a public application, and is not yielding a profit in the commercial or mercantile sense. It is curious that this confusion of thought arises most commonly concerning presidents' and professors' houses, dormitories and athletic grounds, and sometimes concerning dining-halls or refectories, but very seldom concerning the income from railroad stocks and bonds, public securities, mortgages, or other like sources of income. I think I have never heard anyone propose at legislative hearings in Massachusetts that the personal property of institutions of religion, education, and charity should be taxed. The taxing proposals relate to real estate used, as the statute says, "for the purposes of the institution." Now the plain fact is that the application of the whole income of these exempted institutions is the same, and there is no good reason for exempting one class or sort of property which does not apply to the whole property. The reason for the exemption is that the whole property of exempted institutions and all the income thereon is used for public purposes. When a college lodges and feeds students it usually competes with private persons who also perform these functions. That competition is an aid to students, and as such is one of the incentives for colleges to maintain dormitories and dining-halls.

One advocate of taxing colleges last Thursday asked this question, "Suppose a college did nothing else but let dormitories; should not those dormitories be taxed?" Of course they should. Such an institution would not be a college at all. It would be nothing but a provider of rooms for college students at a mercantile profit. That is exactly the business of the trustees or individuals who provide dormitories for students in Cambridge for the private profit of the owners. Such dormitories are a private investment, and their net rents are used for nothing but a private purpose; accordingly, they are all taxed, and the present valuation for taxation of such buildings in Cambridge is $2,519,900. (See p. 111.)

Taxation of Professors' Houses and Dormitories means Diversion of Funds from their Present Public Use.

The advocates of the legislation which would cause professors' houses and dormitories to be taxed all protest that they have no desire to injure Massachusetts institutions of education. They find themselves unable to face squarely that imputation. Yet what they propose would take many thousands of dollars out of the income of these institutions now devoted to teaching, and apply it to streets, sewers, lights, police, fire department, etc., in the cities and towns where these institutions of education are situated. Thus Senator Feiker indicated clearly that he desired to secure for Northampton the full tax on $400,000 of the property of Smith College. That, to be sure, is only a portion of the property of Smith College; but if Senator Feiker had his way he would subtract $6,800 from the annual resources of Smith College applicable to education, and spend that money on the schools, highways, sewers, police, etc., of Northampton. He would damage Smith College just so much, and relieve taxpayers in Northampton by the same amount, in spite of the fact that the presence of Smith College has done nothing but good to the property holders and business men of Northampton,— a fact which was demonstrated before the Recess Committee on Taxation last October beyond the shadow of a doubt, Northampton having been shown to have 35½ per cent. of the taxable property of Hampshire County, when it has only 30½ per cent. of the taxable individuals, and only 32 per cent. of the population of the County. In other words, Northampton is much better off than the average of the County.

Another advocate of taxing professors' houses and dormitories suggested that Senate Bill No. 54 would probably not make more than a million dollars' worth of college property assessable in Cambridge, and that taxes on such an amount would be a trifle for Harvard University. True, such legislation would not ruin Harvard University; it would simply divert $19,000 a year, or four professors' salaries, from teaching purposes to the ordinary Cambridge objects of municipal expenditure; but so far as it went it would be nothing but an injury to Harvard University, and whoever advocates it is advocating the diversion of money heretofore used for educational purposes to lower public uses, namely, city expenses. So far forth, he is impairing the Massachusetts faith in education as the supreme public interest. I make allowances for the errors of some of the advocates of these pitiful measures, when I see that they are not Massachusetts born, and cannot be expected to understand the Massachusetts policy towards education so well as those of us who are natives; but I want to point out plainly that their protests that they are not attacking, or attempting to injure, Massachusetts institutions of higher education, do not blind or deceive anybody.

Property Exempted for a Puplic Use Enriches a Community.

The attorney for the town of Amherst made much of the fact that the valuation of property exempted in the town of Amherst was 47 per cent. of the whole valuation of the town, or, in other words, that in Amherst the value of the exempted property was almost as great as the value of the assessable property; and he seemed to think that this fact proved that the presence of Amherst College and the State Agricultural College in the town of Amherst was a burden on that town. Before the Recess Committee on Taxation, last October, it was conclusively proved that the amount of exempted property in a city or town gave no indication whatever of the financial condition of the town itself, provided the amount of assessable property was well proportioned to the number of assessable persons in the town; that some Massachusetts cities and towns in which the amount of exempted property was large were decidedly more prosperous than similar cities and towns in which the amount of exempted property was small; that the most probable supposition was that a town with large amounts of exempted property would be a better town to live

in, and therefore a more prosperous town, than a place with a small amount of exempted property in churches, colleges, schools, hospitals, and parks; but, at any rate, that the existence of a large amount of exempted property gave no indication that the town was financially oppressed or burdened. Thus, the total amount of exempted property in the city of Boston is enormous, and is increasing: as the value of land in the best parts of the city rises, handsomer and better-planned buildings are erected for religious, educational, and charitable purposes, and parks and playgrounds increase in number and in value.

Consider for a moment what Boston Common means in the way of exempted value. Consider that the Harvard Medical School alone has lately added three millions of dollars to the value of property exempted in Boston, and will, within a few years, add as much more, through the hospitals which are to be built about the Medical School. Consider what the presence of this State House means in the way of exempted property for the city of Boston. Consider the great parks and parkways which Boston has built and set aside forever for public enjoyment. And then realize fully that all these exempted properties in Boston make it richer and not poorer; that they are not a burden, but a priceless possession, not only for the present, but for future generations.

Exemption an Imaginary Burden.

To return to Amherst. Amherst, probably because of the presence within her limits of Amherst College and the State Agricultural College, has a lower tax rate than Ware, Easthampton or South Hadley, comparable towns, except that they have not nearly so much exempted property as Amherst. The tax rate in Amherst is decidedly lower than the average tax rate of the County. It has $8\frac{1}{2}$ per cent. of the population of the County, but 8.8 per cent. of the taxable individuals residing in the County, and 10 per cent. of all the taxable property in the County. If the presence of exempted property within the limits of the town were a burden, Amherst's burden would indeed be large. Its singularly prosperous condition as compared with the rest of the County proves that the presence of its large proportion of exempted property is no burden at all, but simply an advantage. With a few insignificant qualifications, the same is true of all the towns and cities in the Commonwealth which enjoy the presence of colleges or

universities. No burden falls upon them in consequence of the exemptions within their limits; but, on the contrary, their financial condition is better than that of the towns and cities which do not enjoy the presence of valuable educational institutions. And yet the ears of this Committee and of many earlier Committees have been wearied with cries for relief from a burden which is wholly imaginary.

Reimbursement of Towns not called for, there being no Local Burden.

The same argument to an imaginary burden is used in support of the various proposals that the Commonwealth shall hereafter annually pay to every city or town in which an educational institution is situated the whole or one-half of the tax levied upon the property of such institution. This proposition assumes that there is a local burden resulting from the legislation of the Commonwealth in favor of religious, educational, and charitable institutions; it admits that it is the duty of the Commonwealth to aid such institutions, but insists that the Commonwealth should not force the cities and towns where these institutions are situated to give that aid, but should give the aid itself. If, as I have pointed out, the legislation of the Commonwealth imposes no burden on the towns and cities in which these exempted institutions are situated, the whole argument for annual payments from the treasury of the Commonwealth to these towns and cities falls to the ground. The accompanying allegation that Massachusetts has not really aided these institutions of education and charity has no foundation. Massachusetts has cherished her colleges and technical schools by direct grants, and she aids some of them still in that way, besides supporting the State Agricultural College and the normal schools. You may still see at Harvard College the president's house which the Province of Massachusetts built and gave to the College. You may still see there three other venerable buildings which the Province built and gave to the College, two of them built for dormitories and one for the other public uses of the College. Between 1636 and 1824 Harvard College received the sum of $216,000 in numerous small grants made by the Commonwealth in aid of the College. To-day, the Commonwealth is paying $25,000 a year to the Massachusetts Institute of Technology. The Province and the Commonwealth have aided the institutions of higher education, and

the Commonwealth is still aiding them. The exemption statute itself is effective cherishing. The Legislature of Massachusetts is far too intelligent to be influenced by the false statement that she neglects to cherish her institutions of higher education, and is also too intelligent to vote to pay large sums of money to the cities and towns which contain colleges or universities, in order to relieve those communities from a wholly imaginary burden. Let me remark in passing that under House Bill No. 474 the Commonwealth would annually pay to the city of Cambridge at least $200,000 a year, with the sole result of reducing to that extent the tax levied on the taxable citizens of Cambridge. Cambridge already possesses more than 18 per cent. of the taxable property in Middlesex County, while it has but 16 per cent. of the population of the County. Senate Bill No. 53 proposes that the whole of the tax levied locally on the real estate belonging to literary and scientific institutions shall be paid by the Commonwealth to the city or town which contains the exempted institutions; under such a law an immense sum would be annually payable to the city of Boston out of the State Treasury, since Boston contains a large number of exempted literary and scientific institutions which own costly lands and buildings. To be sure, under such legislation (if I understand it) the exempted institutions would not suffer any reduction of the resources applicable to their public objects, but the State Treasury would suffer severely, not for the promotion of religion, education, or charity, but to relieve the citizens of certain privileged cities or towns from a burden which is wholly imaginary, or, in other words, to give those fortunate cities and towns a large pecuniary bonus in addition to the advantages which they derive from the presence of the exempted institutions. It would be a striking peculiarity of such legislation that the more the value of land rose in the vicinity of the exempted institutions, in consequence of the good effects of those institutions on the towns and cities in which they are situated, the larger would be the payment made to those towns and cities by the Commonwealth. Thus, the value of the land about the site of Harvard College in Cambridge has risen very much within the last ten years, and is likely to rise, because of the presence of the College. The higher goes the price of land in its vicinity the higher will be the assessors' valuation of the territory occupied by the College, and the greater will be the sum to be paid annually from the State Treasury to the city of Cambridge. In general, the more prosperous

the city of Cambridge or the city of Boston became, a prosperity indicated in the values of Cambridge or Boston real estate, the larger would be the sums annually to be paid by the Commonwealth to the city.

Excessive Valuations.

A single foolish purchase by a small but rich college club of a corner lot opposite the College at an extravagant price induced the Cambridge assessors to raise the valuation of large areas of land about the site of the College, and to add correspondingly to their valuation of real estate exempted in Cambridge. The additions they made to the valuations were extravagant; so that they were forced subsequently to retrace some of the steps they had taken. Consider how the temptation to excessive valuation of real estate, to which assessors are now subject, would be increased, if for every increase of valuation in the real estate of their town or city they could suck thousands of dollars out of the State Treasury under such legislation as that of Senate Bill No. 224 or House Bill No. 474.

Massachusetts does not Grudge the National Service Rendered by its Colleges.

I heard on Thursday last with pleasure and surprise, one new argument in favor of putting the support of every institution of higher education on the state or the nation, rather than on the locality in which the institution is situated. Of course, this new argument assumed, what is conspicuously untrue, that the locality carries a burden in support or aid of the institution of education; but overlooking for a moment that ancient fallacy, there was a new element in the argument, namely, that while a church is a purely local institution, a college or technical school is not; for the college or technical school is resorted to by students from all parts of the state, or all parts of the country, and, therefore, the state, or the whole country, ought to support it or aid it. Thus students from many parts of the country and some foreign countries resort to Amherst College. Why should the town of Amherst do anything for them? The first answer to this question is that the town of Amherst does not support Amherst College, or even contribute to its support. The College is supported partly by the students who resort to it and pay its tuition fees, and

partly by the benevolent individuals in many parts of the country who endowed it under the protecting and cherishing laws of Massachusetts. How short-sighted and ungenerous is this argument! Can we suppose that the people of Massachusetts, or of any town or city in Massachusetts, really desire that the resort to Massachusetts institutions of education should become less national in range? Do the people of the Commonwealth grudge to the students who come to our excellent institutions of education from other parts of the country or from other countries, the facilities they seek and find in Massachusetts institutions? Do the people of the Commonwealth really desire to check the flow of gifts and benefactions from outside of Massachusetts to these institutions of higher education? It is incredible that they should feel any such desire. The people are proud of the reputation of the Massachusetts institutions of higher education. They welcome to these institutions students from all other parts of the country and from other countries; and they take especial pride in promoting in every possible way the Massachusetts industry of giving instruction. Moreover, they know that an institution to which students resort from far and wide will be for that reason a better and more influential institution. It would be easy to check both the flow of students and the flow of money into the Massachusetts institutions. Would the General Board of Education, lately so largely endowed, give any support to Massachusetts institutions if they could suppose that Massachusetts was going to tax educational benefactions? Would the great stream of benefactions continue to flow to Massachusetts institutions if intending givers learned that Massachusetts entertained a proposal to tax any part of the properties set aside forever under the existing laws of Massachusetts for the purposes of higher education? It has been repeatedly said, during the discussion of these bills which propose to tax certain portions of college property, that the immediate damage caused by this legislation would be small. True, the edge of the wedge is thin, and it is not proposed at this moment to drive it in very far; but no prudent man will permit even a thin wedge to be inserted into the post which supports the corner of his dwelling. This proposed legislation, petty as it is in its immediate effects, will go far to impair confidence in the stability of the great Massachusetts policy for the support of the higher education, a policy which has contributed largely to make Massachusetts what it is, a policy which has produced institutions of education as yet unsurpassed in the entire country.

No Evidence that Taxed Land is Rendered Exempt Faster than Compensating Benefits are Diffused.

I turn now to consider some of the predictions about the future effects of insistence on the part of Massachusetts in her present policy of exempting from taxation her institutions of higher education. It is said that under the exemption policy of Massachusetts the colleges and other exempted institutions are continually taking more and more of the real estate of their towns or cities out of the taxable lists by buying private property which has heretofore been taxed, and adding such property to the real estate already devoted to their own educational purposes, thus progressively diminishing the assessable valuations of their towns or cities. On this suggestion of future evil several reassuring comments may be made. In the first place, when a college or hospital buys private property in its vicinity, it pays for it, and the price it pays ordinarily remains as taxable property in the town or city. Occasionally exceptions to this rule will occur; but such is the rule. In the next place, by increasing its holdings, a college usually increases the valuations of the lands lying about or near its holdings, old and new. Thirdly, when a college increases its holdings, other lands in the same town or city usually come into use and acquire a new value. There is plenty of unoccupied land in every Massachusetts town or city which harbors a college, waiting to experience this rise of value. In the city of Cambridge there are at this moment hundreds of acres of unmarketable land waiting for Harvard University, or new industries, or new residences to give them value. Fourthly, it is clear that there is no existing evil of this sort within the Commonwealth; and that it is never expedient to legislate against non-existent evils. All the towns and cities in the Commonwealth which contain institutions of higher education are to-day better off in regard to their several amounts of taxable real estate than the corresponding towns and cities which do not contain colleges. This is not a matter of opinion; it is demonstrable from the published tables of the Commonwealth's Tax Commissioner. If, in the future, any evil of this sort shall appear locally, it will probably not be beyond the ingenuity of the Legislature, aided by the assessors, to devise a local remedy.

Publicity of Accounts a Proper Condition of Exemption, and the only Needed Defense against its Abuse.

Finally, we must consider what weight to attribute to a line of argumentation always used by the advocates of taxing colleges. They say — where there is so much smoke there must be fire; where there is so much sense of injury there must be some injustice; this proposed legislation is bound to come, therefore it had better come now. Doubtless there is fire under this smoke. There is the fire of ignorance, the fire of jealousy, and the fire of natural desire to get one's own taxes reduced by acquiring the right to tax large masses of visible property which now are exempted. There is also the burning zeal of assessors eager to get hold of new resources for taxation. The right way to deal with these smoky fires is to put them out by means of the cooling streams of knowledge, unselfishness, and public spirit, and of wise legislation to improve our methods of taxation. The argument that something is bound to come, and therefore shall arrive now, ought to be put out of court without ceremony as wholly unworthy of intelligent freemen. It is not destiny which has made Massachusetts; it is Massachusetts that has carved out her own destiny. The traditional policy of Massachusetts needs, in my opinion, only one defense, and that is, a complete publicity concerning its own workings. If only the whole people of the Commonwealth could be shown just how the endowment and exemption policy has worked, and is working, for the highest interests of Massachusetts, the people would not permit that policy to be tampered with. I am not sure that existing legislation has adequately procured this very desirable complete publicity; indeed, the amount of misapprehension on this subject throughout the Commonwealth, even among the educated classes, seems to show that the present provisions for publicity are inadequate. All the wise exempted institutions publish their annual accounts as fully as possible. I venture to suggest to this Committee that no institution or society ought to be exempted from taxation which does not publish in complete form its annual accounts. Such publication is needed to show the public that the whole income of such institutions and societies is really devoted to public uses of religion, education, or charity.

PRIVATE DORMITORIES TAXED IN CAMBRIDGE, 1905.

Name of Building	Valuation of Building	Valuation of Land	Total Valuation	Real Estate Tax
Claverly Hall	$125,000	$42,000	$167,000	$3,173.00
Apley Court	55,000	27,000	82,000	1,558.00
Randolph Hall	200,000	60,000	260,000	4,940.00
Apthorp House	7,000	68,000	75,000	1,425.00
Russell Hall	47,000	35,000	82,000	1,558.00
Westmorly Court	140,000	57,000	197,000	3,743.00
Quincy Hall	20,000	12,000	32,000	608.00
Brentford Hall	60,000	11,400	71,400	1,356.60
Ware Hall	134,000	21,000	155,000	2,945.00
Fairfax Hall	73,000	72,800	145,800	2,770.20
Hampden Hall	130,000	39,000	169,000	3,211.00
Little's Bl'k, 1350 Mass. Av.	30,000	40,500	70,500	1,339.50
Little's Bl'k, 1358 Mass. Av.	25,000	43,800	68,800	1,307.20
Dunster Hall	150,000	50,000	200,000	3,800.00
Dana Chambers	70,000	45,000	115,000	2,185.00
Theta Delta Chi	23,300	12,000	35,300	670.70
Read's Block	20,000	37,000	57,000	1,083.00
Drayton Hall	35,000	7,000	42,000	798.00
Trinity Hall	15,000	5,800	20,800	395.20
Craigie Hall	110,000	18,000	128,000	2,432.00
Waverley Hall	50,000	4,200	54,200	1,029.80
Shepherd Block	10,000	8,800	18,800	357.20
Hapgood Hall	10,000	9,100	19,100	362.90
25 and 27 Holyoke St.	9,000	20,000	29,000	551.00
Ridgely Hall	70,000	10,000	80,000	1,520.00
68 Mt. Auburn St.	4,500	15,000	19,500	370.50
5 and 7 Linden St.	7,000	17,500	24,500	465.50
Beck Hall	58,500	36,000	94,500	1,795.50
66 Winthrop St.	3,000	3,700	6,700	127.30
Totals	$1,691,300	$828,600	$2,519,900	$47,878.10

STATEMENT OF MARY E. WOOLLEY, PRESIDENT OF MOUNT HOLYOKE COLLEGE, IN REGARD TO TAXATION OF COLLEGE PROPERTY.

There is a higher ground than that of the amount of money brought into a town, in the service which is rendered to the community, as well as to the state, by the education of its citizens, but estimated simply in terms of material gain, what are some of the facts with regard to the advantages which the college town enjoys? The value of Mount Holyoke to South Hadley was appreciated at the time of the founding of the institution as a seminary in 1837. Before the site was determined several towns in Western Massachusetts,— South Deerfield, Sunderland and South Hadley, not only signified their willingness to accept the new institution as a neighbor, but actually bid for it, by offering handsome subscriptions to assist in the building. It is evident that in those days New England towns looked upon an institution of learning not as an encumbrance, but as an honor and aid. We do not need, however, to go back to the early days of the last century to find this attitude. Ten years ago when fire destroyed the main building of the college, the suggestion that it would be a favorable time to remove the plant to a larger town where it could have the advantage of fire protection, water works, lighting plant and sewerage system and not be at the expense and inconvenience of providing for itself all these facilities, as it does, the mere suggestion was met by a protest from the townspeople, a protest which it is fair to assume, would be renewed were such a suggestion made today. The conditions at South Hadley are different from those of most college towns,— the town does not furnish fire protection, water-supply, a sewerage system, or lighting plant; all of these the College is obliged to provide for itself. It also clears the snow from the street walks in front of the campus in winter, has the street sprinkled in summer, and paid for half the concrete sidewalk on College Street, which is as great an advantage to the people of the village as to the College itself.

This year the College gives employment to between forty-five and fifty people, residents of South Hadley outside of college houses, and serving as firemen, gardeners, carpenters, electricians, janitors, cleaners

and laundresses, supporting not only them, but also their families, that is, from one hundred and fifty to two hundred people. Since the beginning of this discussion, my attention has been called to College Street, on which the campus fronts, and I have been interested to notice that within a stretch of half a mile, containing thirty-four houses and stores, there are only three which have not derived an income directly from the College; of those three, two are the blacksmith and barber, both of whom are indirectly indebted to the same institution!

The statement was made last Friday that South Hadley does not receive much benefit from the students living in the village, since they are there only temporarily. At the present time there are thirty-nine members of the College Faculty living in the village, two of them owning their houses, the others renting or boarding. In addition, there have been since last September, eighty-two students also living in the village, most of them remaining until the beginning of the second semester, about a month ago. There are now sixty-four students living in the village, making in all over one hundred members of the College likely to remain there throughout the year.

The number of students living in the town is limited by the number of people willing to receive them. Since last December the applicants for admission next September have been put on to the "waiting list" with the possibility but not the assurance of admission, simply because we cannot find places for them in South Hadley.

The College paid to the village of South Hadley Centre last year over fifty-five thousand dollars, including board and rental for Faculty and students living in the village houses, wages to men and women, residents of the village and employed by the College, contribution to the parish to aid in the support of the church, charges for expressage and other carriage, and milk and provisions purchased. The fifty-five thousand dollars, however, does *not* include the amount of money spent by members of the College at the stores in the village and at the "tea room" or restaurant, or the patronage of the dressmakers, the shoemaker and the florist, almost if not entirely, supported by them.

The restaurant closes at Commencement and opens again with the College in the autumn, and one of the store-keepers assured me that he might profitably follow that policy,— his trade was so light in the summer. The drug store and tea-room have been opened within the last three years to meet the demand of the College and probably

would not have been established had it not been for that demand, thus depriving the village of profitable rentals. It would be difficult to compute the amount of money which flows into the town annually through these channels, but it needs no argument to prove that thousands of dollars are added to the town in these ways. No one who knows the average college student, man or woman, would question the lucrative character of the establishments which furnish ice-cream, soda water, candy, luncheons, afternoon tea, fudge materials, crackers, olives, canned goods and a list of other delicacies dear to the inner man or woman of collegiate age.

May I add that the $55,000 paid by the College to the town does not include the amount which is paid in taxes on the six houses owned by the College, occupied mainly by people in its service, in one case the Superintendent of Buildings and Grounds. Reference has been made to the amount of land, desirable building lots, which the College has taken. Of our seven large dormitories, only one fronts directly on the street; the others are on what were originally back lots, made suitable by under-drainage and filling, which probably would never have been used for any purpose other than pasturage. The most beautiful part of the campus, "Prospect," was a rocky, barren hill until the College bought and beautified it.

The location of a college in any town very materially increases the valuation of the property. Within the last three years six houses have been built in the immediate neighborhood of the campus, five of them directly opposite and used almost exclusively by college people. Two of these were finished last autumn, one of them an apartment house with twelve apartments, nine of which are already occupied by members of the Faculty; the other, a large house built by an alumna of the College in order to take students as boarders, has eighteen there this year. Within the last month two parties have been to the speaker with the hope that there might be some way of securing houses to use for college boarders, but there are none for rental in South Hadley to-day, according to the statements of these people who are in search of them. This excess of demand beyond supply must mean an increased valuation of property, as is shown by the facts that a house lot near the campus sold for about $1000 three or four years ago, at double the price previously paid for similar lots, and last summer a lot not more than 500 ft. distant from it, sold for $1600, four times its valuation ten years ago. One member of the Faculty who has

built a house on a lot, which by the present tax rate would pay a tax of about ten dollars, pays about one hundred dollars, ten times the amount which would be paid on the original property. The five other houses recently built near the campus of the College, probably show a corresponding increase coming to the town in taxes, because of the College.

The College has added to the value of property in other ways. In 1896, realizing the need of an electric road to connect it with the city of Holyoke, the College cooperated with the town in securing it, several years at least before the company would have been willing to build a railway to so small a village. The advantages to the town of this addition, not only in convenience and the increased desirability of the property, but also in the income which it receives from the tax are obvious. In 1901 an acetelyne gas plant was added and to-day the large consumers are the people who keep college boarders, thus making the convenience possible.

I have said nothing about the value of the College to the town in lines of general culture. Do many New England villages the size of South Hadley support a course of free lectures given by some of the finest specialists in the country; a series of musical recitals, also free, or with so low an admission that it is practically discounted; a carefully selected library of more than 30,000 volumes; an art museum with a collection worth many thousands of dollars? Such additions increase the desirability of a town as a place of residence and thus directly affect its property value.

It has been said that the proposed bill concerns only a small part of the college property and therefore could not be a serious disadvantage to the College from the financial point of view. This is certainly not true in the case of the colleges for women where the dormitory is an important part of the entire scheme of education. The argument in favor of dining halls for men that they may make possible a college course for students of limited means, is applicable with even greater force to women, who, for various reasons, are less able to earn money during their student days and are more dependent upon the liberality of the College.

The rates at Mount Holyoke are very low, $300 for board and tuition, and only by the closest economy have the expenditures been kept within the receipts. It is not strange that the people in the village say that they cannot afford to board the students at the rate at

which the College takes them, but even the $30 per year additional, which is charged at the village houses, is prohibitive in the case of many applicants for admission.

What would taxation of the dormitories at Mount Holyoke mean? The passage of such a bill could have but one result in our case, sincerely as we might deprecate it, and that is a raising of the rates and thus the limitation of the education which the College gives, to the students of larger means. There would be no other course possible.

We count ourselves fortunate in meeting expenses, a difficult process with the increased cost of provisions, of coal, of service, the needed repairs as the buildings grow older, and many incidentals. Salaries must not be diminished, rather, they should be increased, for no work in the country is so notoriously underpaid as the profession of teaching, especially in the institutions of higher learning, where not only is a long and expensive training required as a preparation, but other expenses, such as books, travel, study, are indispensable for the instructor who wishes to keep abreast of his subject. Scientific apparatus for the laboratories, photographs and casts for the courses in art and history, and books for all departments, call for larger and larger expenditure to meet the demand of the age for well trained men and women in all lines of work.

It has already been shown that no college is a money making institution. The student does not pay for what he actually receives from the college. No institution of higher education in Massachusetts would be able to continue were it dependent solely upon students' fees, which do not begin to meet current expenses. Not only are the endowments private benefactions, but in most cases the dormitories as well. We cannot afford to build a dormitory to-day, for the board of the students would not pay the interest, to say nothing of the sinking fund. Dormitories then are private benefactions, a gift to the students and to the town. When a college is so fortunate as to have the receipts from its dormitories exceed the cost of running them, those receipts go immediately into the plant to increase the efficiency of the product, in this case the human product of trained powers and finer character.

A recent writer on education says that by economy is always meant economy of money and never for a minute the economy of human intellect and human character that in the end serve the state more than any fiscal scheme, however shrewd and far reaching. It would indeed be a short sighted economy on the part of the state to advocate any

measure which would tend to limit the number of its citizens trained for efficient service. Every institution represented here to-day could fill far more time than you would be willing to allow, simply in the enumeration of the men and women among the graduates who have rendered marked service to the state, in many cases that which may be called distinguished, in many more that which while less widely known, has not been less vital to the welfare of this commonwealth. In the few minutes which are left I should like to call attention to one line of work in which the alumnae of Mount Holyoke College together with the graduates of other institutions, have been engaged. More than two-thirds of our graduates have been teachers, at least for a time, the majority of them in the public schools, a work of which the importance can hardly be over estimated. The hope of the community, the state and the nation, is in the education, the development in character of the children, not only of American parentage, but even more of those born into homes in which the meaning and aims of our American life are an unknown tongue. A teacher in an East Side school in New York writes,— "Every year as I face a roomful of children without a name among them that suggests American ancestry, or American traditions I am impressed with the fact that here are American citizens in the making!" American citizens in the making! Is there any service more vital to the welfare of the country than that which is entrusted to our teachers? And is there any position where there is greater need of the finest culture and the finest character that our colleges can supply? The great majority of these children never reach the colleges, the high schools, or even the upper grades of the elementary schools. Their training, not only in the rudiments of learning, but also in the rudiments of character, must come to them from their teachers, if they are ever to have it at all.

There is a close relationship then between the college and the state and the latter is the debtor in more ways than one. Massachusetts gives no endowment, does not help to make the work possible by appropriation, but it does not seem credible that she can think of putting obstacles in the way of education and thus make it the luxury of the rich. The western states appropriate annually thousands and hundreds of thousands of dollars for the state universities and thus bring higher education within the reach of all. Will this state, for generations the leader in education, take a backward step and make college difficult, if not impossible for the many?

Reference has been made to the fact that money received from taxation of the colleges would enable the state to send an indefinite number of students to Oxford or Cambridge. Is it possible that I heard that statement aright? Is it true that this state, honored throughout the world for its leadership in education, would consider for an instant the taking of a secondary place? I had thought that we were proud of drawing students from England and the Continent and the far East, to our universities and institutes of technology and colleges, not of sending them away with the admission that we are not longer able to give them as fine educational advantages as the civilized world affords.

It cannot be that the advocates of this measure realize its undemocratic character or the short-sightedness of the policy which would mean lessened ability on the part of the colleges to give the best opportunities for education, or such increase in the rates as would exclude a large part of the men and the women whom the state needs as trained and efficient servants.

REMARKS OF G. STANLEY HALL, PRESIDENT OF CLARK UNIVERSITY, BEFORE THE JOINT COMMITTEE ON TAXATION, MASSACHUSETTS LEGISLATURE, MARCH, 1907.

The relations between Clark University and the community have been unique and in some respects ideal. When Worcester first heard that one of its citizens had projected a university, the city government promptly framed a congratulatory address and the north and south ends of the town vied with each other in offering inducements to win it. Before the building was completed, the city bought and reconstructed at much expense an attractive park across the way which was named University Park. The directors of the Board of Trade comprising between 400 and 500 members surprised us by a spontaneous communication in which they said the city "has been greatly honored in being selected as the place in which to establish a university" and they pledged the sympathy "of every citizen who entertains in any degree the interests and functions of knowledge among the human

race." During the eighteen years of its existence the town in its locality has developed rapidly as is indicated by the fact that five new churches have been organized or houses of worship erected nearby, while valuations which have been the bases of taxation have been raised in some cases five times, probably far more than covering the total wealth of all the real estate of the University. In its annual circulars the Board of Trade cites the University as one of the attractions which make the town desirable for businesses in quest of location. Both individuals and groups of individuals have repeatedly made spontaneous and substantial contributions to its work. Very many lectures have been given, open freely to and largely attended by citizens. I myself have given scores of such lectures at the University and at very many churches, clubs, etc., having never received a cent of pay. There has been from the first a total absence of all town versus gown spirit.

Again, some institutions are charged with secreting their affairs, but by the will of the founder of Clark University the complete report of the treasurer giving all details is filed each year with the mayor where it is open to inspection by any citizen of Worcester. In the original letter of gift the founder stated that the donation was for the benefit of the city of Worcester. The library of the University is open freely to citizens, some of whom make extensive use of it. The art collections also have been gratuitously open to visitors from the first. It is therefore not surprising that the city of Worcester has shown no disposition to tax either the professors' residences or the small tracts of land we have owned from the first. Our institution is a public charity bequeathed in trust for the benefit of the city and the community, and the world. The trustees give their services. Any citizen is eligible to the Board and its members render onerous but unremunerated services. In no other institution of the kind known to me in the world does so small a proportion of the running expenses come from the students and in very few is the patronage of the college department so local. Even in the college department, where most fees are paid, my colleague, its head, Carroll D. Wright, figures that it costs $500 a year to educate each student, while the fee is only $50. In the University from the first, the great majority of students pay no fee and many of them have received stipends in the form of scholarships and fellowships. We have no dormitories and the money that students bring here is chiefly left in our stores and in private boarding houses kept by citizens.

No such institution can ever be rich in the sense that any one can take our profits, for if there were such they would be at once put to work to extend the public utility of the institution, for any endowed university is as truly a public charity as an orphanage or a library. If you tax us, the amount of service we render is by so much reduced. We might scale down salaries or try the hazardous experiment of increasing fees, which would probably reduce the number of students or take it out of the library or the appropriations for apparatus and running expenses or for repairs, care of grounds, etc., so that the attractiveness of the plant would suffer. On the other hand, suppose the State made us a gift as Massachusetts once did to Harvard and still does to technical institutions. Suppose in this or in any other way our resources were at once doubled. Neither the president, nor professors nor any other servants of the University would be likely to receive more pay, although there would be more work to do. Nothing would be laid up, but only the service rendered to the community and the State would be doubled.

Another very vital point not, I think, sufficiently realized is this. The great universities of the Middle West have, after a generation or two of struggle, now become so influential, partly through their graduates in the State legislatures, that they can now have, as one president lately boasted, almost anything that they ask in reason from the State. They are now the chief though happily friendly rivals of the old endowed universities of the East. Many of them have received large private donations in addition to the annual appropriations from the state. Suppose the latter or some private citizen were to purchase and give half a dozen of the most valuable blocks to the state university. This property would at once be completely exempted from taxation, for in these institutions nothing whatever can be taxed any more than State's prisons, almshouses or asylums. In the competition between these two classes of institutions for students and for professors, the area from which New England and especially Massachusetts institutions draw their students is becoming relatively more and more restricted so that they are increasingly local in their patronage if not in their donations. In view of this condition, the policy in reversing all the old traditions of Massachusetts from the Colonial days to the present and taxing colleges and universities seems pitifully short-sighted, for it lays a serious handicap upon us of the East and seems very small politics. Indeed, so lavish are the funds which

the states now pour upon their own institutions which are perhaps the most characteristic creations of the Mississippi States that we have several times heard the prediction that the institutions of the East have had their day and will slowly fall behind in the race. The Western institutions are proud and strong because they feel that the great states are behind them. They charge practically no fees to their students. There can be no doubt, however, that on the whole public institutions like these are less economically administered than private institutions. The propositions lately considered in this state to tax colleges and universities are not creditable to our public spirit or to our patriotism. The policy of the petitioners is not that of the fathers who made Massachusetts till lately the educational leader among the states of the Union. They are hurting the educational prestige of New England and helping our rivals.

REMARKS OF L. CLARK SEELYE, PRESIDENT OF SMITH COLLEGE, BEFORE THE JOINT COMMITTEE ON TAXATION, MASSACHUSETTS LEGISLATURE, MARCH 13, 1907.

Mr. Chairman and Gentlemen: I discussed this matter fully before the Committee on Taxation last year and also before the Recess Committee, and I presented then some figures and some arguments which were reported in a paper, a copy of which, to save time, I beg leave to submit to the Committee without reading.

I wish now to reply briefly to some things that have been said at this hearing. After the discussion of this subject before the Legislative Committee last year it was referred to the Joint Special Committee on Taxation. That committee, with only one dissenting voice, gave as its conclusion, "that the presence of an educational institution imposes no financial burden upon a community which is not balanced by adequate compensating benefits." That conclusion impartial investigation will confirm. There is not a town or city in Massachusetts, which is not compensated by adequate financial benefits for the existence of a college. The taxes have not been increased

thereby, and the taxable property has been increased, not diminished. These communities are just as desirable places for business or for residence. There has not been a single fact yet presented to show that in any way these colleges have diminished the financial prosperity of the cities or towns where they are located. They have made them more prosperous.

The single point which has been referred to here again and again is the large ratio of this exempted property to the taxable property of the city. Whence came the bulk of this exempted property? Take Northampton, for instance. $365,000 came first from Miss Sophia Smith of Hatfield. With that $365,000 the Trustees of Smith College bought a site. That site which they bought had been assessed by the assessors of Northampton for $19,000. To secure it the Trustees of Smith College were forced to pay $50,000 out of the money which was received from Miss Sophia Smith. Where did that $50,000 go? Into the pockets of the people of Northampton. All the property which Smith College has received since can be accounted for in a similar way. By far the larger portion of it has come from persons living in other cities and States. The real estate which has been exempted has been paid for to the citizens of Northampton out of this money, and what was paid them they reinvested in other taxable property.

Now, Northampton asks that the State should recompense it for this so-called burden of exempted property which has been given to it by the inhabitants of other towns and cities. Hatfield, which has contributed so largely to the Northampton institutions, would be asked to pay a tax upon what it has given to Northampton to establish a college there, because, forsooth, its gift has become a burden to the city. I think the citizens of Hatfield will not see it in that light. I think the citizens of other towns also will not see it in that light, when they are asked to recompense these more fortunate communities; for the experience of Northampton is essentially the same as that of other communities where colleges are located. The claim that this exempted property is burdensome is, as President Eliot has said, purely an imaginary grievance.

Northampton is indeed burdened by its debt of some $600,000. But there is not an item of it which has any relation to the presence of Smith College. What was the main item of this debt? A foolish appropriation of $300,000 by the citizens of Northampton before

Smith College was located there, to secure the Massachusetts Central Railroad. That appropriation with its accumulated interest cost Northampton very nearly $600,000. What are the other items? Appropriations for an armory, for grade crossings, for schoolhouses, for sewers, for water works. The cost of its water supply covers about half the debt of Northampton. That item is taking care of itself. It will be paid for in a few years out of the water rentals. Smith College pays these rentals like other consumers and it helps Northampton pay, therefore, its water debt. What is the next item? Sewers. Smith College pays for those the established rates. The next large item is for schoolhouses. These schoolhouses were not built for the accommodation of Smith College. Should the Trustees of the College be taxed for their maintenance when they are providing, without any expense to the city, a higher school of learning and better schoolhouses than Northampton provides for itself, and are educating freely the daughters of its poorest citizens?

There is n't a single item, therefore, in this indebtedness of Northampton which has any relation whatever to the presence of Smith College. These debts would have been the same had Smith College never existed, and all these the Mayor of Northampton said in his inaugural last year would be paid by the established sinking funds in 1921.

Notwithstanding the statements made here this morning, Northampton is one of the most prosperous, one of the most attractive towns in this Commonwealth; and could you have been there at the celebration of the 250th anniversary, you would have heard a very different strain from the lugubrious language you have heard here to-day. The speeches then were in laudation of Northampton institutions, of its college, of its desirability as a place of residence, and of its superior educational advantages. There was n't a note of discouragement. One of the oldest residents of Northampton — the veteran editor of the "Hampshire Gazette" — justly characterized this movement on the part of some of its citizens to tax the college as "a political move, started for political purposes," and said there would be such an uprising among the citizens of Northampton as was never seen before in its history, if the college were likely to be removed from the city.

In view of the manifest benefits which have been derived from it, I am astonished that men can come up here, and represent to this

Committee that Smith College is in any way adding to the financial burdens of Northampton, or depreciating its value as a residence. I assure you, gentlemen, after living there for thirty-four years and knowing somewhat of the interests of Northampton, as well as of the interests of the college, such statements as have been made cannot be substantiated by the facts. You have been told that the roads need more repairs because they are travelled by Smith College students. No extra appropriation was ever made on that account, and no new road has been laid out for the benefit of Smith College. The girls need no extra police from the city. The college pays for its own police force. It pays also for its sidewalks, and often a larger sum than other abutters.

I was amused to see that map of Senator Feiker's in which he pictured the location of the college campus. You would have thought from that map that Smith College took up the greater part of Northampton, while in fact it owns only about 40 acres out of 20,000; that is, you must multiply his map 500 times in order to get the relative proportion of the college to the area of the city.

These petitioners, gentlemen, are not consistent. Two years ago, with Smith College burdens staring them in the face, they were anxious to have the new Smith's Agricultural School located there and to have it purchase as a site some of the land belonging to the city, and the city officials expressed themselves highly gratified when the land was sold for that purpose, because of its prospective civic benefit.

Senator Feiker says the whole of Elm Street where the college is located will soon be absorbed by it, but if the value of property rises there in the future as it has in the last ten years, the college is not likely to be rich enough to buy much more, for the price in its vicinity has been enormously increased by its presence. A small piece of property, for instance, opposite the college campus was assessed for about $4,000 the year before the college was located. It is now valued at about $100,000. When the entire taxable property of the city has trebled in value; when its population has doubled; when its business interests have largely increased— where is the great necessity of the Legislature of Massachusetts coming to the aid of Northampton, to enable it to live on account of Smith College?

Does this higher education pay? That question the Commonwealth has always, thus far, answered affirmatively. While these colleges and universities are not established to make money, they

are to a nation its greatest source of wealth. They enable men to understand and control nature's forces. Men are made rich by their discoveries. But there is a higher plane to look at this question than that of mere finance.

What have these colleges done for Massachusetts and for the nation? Harvard has given four Presidents to the nation, Williams has given one. They have given us more governors than I can enumerate. Our colonial life was fashioned by the graduates of these colleges. They shaped the Constitution of the Commonwealth and of the Federal Union. They have given us our great jurists — the most eminent men in all our learned professions. Will you go back on that record because of this talk about these petty profits which may come occasionally from dormitories, when, as President Eliot has well said, no profits can ever come to an institution which uses all its income for the public good. Will you now degrade these higher institutions of learning on which Massachusetts depends for its prosperity and glory?

Ah, but it is said we are educating at the expense of the Commonwealth students from other States! Do you regret educating the present Chief Magistrate of the nation because he came from the State of New York? Is it not to the glory of Massachusetts that President Roosevelt is a graduate of Harvard College, and that other Presidents have graduated there? I think, gentlemen, it is time to look at this question on a little higher plane than that from which it has been considered by the petitioners. It is well to consider its moral bearing. A breach of trust on the part of the inhabitants of Northampton is involved in this plea that the college shall be taxed. Without a dissenting voice they voted to receive this money from Sophia Smith to found a college there, with the distinct understanding that the college would be exempt from taxation. They have accepted all the gifts which have been made to Smith College since then without a protest. Are they now to be allowed to put their hands into the college treasury and take these trust funds which were given to them solely for an educational purpose, to help them pay for their roads, their bridges, their schools, their ordinary expenses and their various subordinate officials? The moral sense of the community ought to revolt against the suggestion.

Nor is it merely the amount which would be taken from these institutions by the proposed taxation which should be considered. It

is the amount which would be taken from them by inducing philanthropic men to say: "If you tax that property for civic purposes you shall have no more gifts from us." These bills, if enacted, will destroy the principal sources from which these colleges are fed.

Gentlemen, I did not intend to speak so long nor to speak with so much feeling, but after giving most of my life to the service of Smith College, and knowing how much benefit it has been to the city where it is located, I confess to a little indignation when I see some of the citizens of Northampton coming here and claiming these educational institutions are a burden, and should be taxed, because they want a few more dollars to pay taxes which they are abundantly able to pay themselves

Memorandum — Smith College, Northampton, April 19, 1907.

Smith College has fourteen dwelling-houses, and in these houses the lady who occupies the position of house-mother and an assistant teacher reside; and their presence is so essential to the well-being of all members of the household, that if they were obliged to reside elsewhere it would seriously lessen the educational value of these houses. Should the Senate Bill No. 290 be enacted and literally enforced, all these houses might be subject to taxation.

Smith College has no separate dwelling-houses for its teachers or officers exempt from taxation, except the one occupied by the President and his family. Experience has shown that it adds much to the educational efficiency of the college when the President resides in the midst of the community which he directs, where he can be readily consulted at all times when his counsel is needed, and where he can become most familiar with the condition of those over whom he presides.

We object to the Senate Bill No. 290 not only because it violates the established educational policy of Massachusetts, but also because it is so ambiguous in its phraseology that it would be likely to inflict upon the colleges — especially the colleges for women — a much greater injury than its advocates intend.

L. CLARK SEELYE,
President of Smith College.

REMONSTRANCE OF MASSACHUSETTS COLLEGES.

1907.

REMONSTRANCE OF MASSACHUSETTS COLLEGES.

1907.

At a meeting of the representatives of universities, colleges, scientific establishments and seminaries, in the Commonwealth of Massachusetts, held at Boston on the seventeenth of April, 1907, it was unanimously voted that a copy of the following remonstrance be sent to each member of the Legislature:

To the Members of the Senate and House of Representatives of the Commonwealth of Massachusetts: —

We, the undersigned, officers of Massachusetts universities, colleges, and scientific establishments which grant degrees, respectfully represent that the passage of Senate Bill No. 290 would be injurious to the most precious interests of the Commonwealth; because it would inevitably impair the confidence of the American public in the permanence of the Massachusetts policy of promoting education, religion, and charity by encouraging endowments and exempting them from taxation.

This policy has been steadily pursued since the foundation of the Commonwealth, and its results in serviceable institutions completely demonstrate its wisdom.

It is now proposed to depart from this policy, though only in one detail — the exemption of real estate belonging to institutions of the higher education and occupied by their officers of instruction, administration, or government.

The evil effects of such a modification of the exemption statute cannot be measured by the amount of money which would be diverted from educational uses at the institutions affected. That amount and the consequent injury to educational efficiency would be different at the different institutions we represent. In some the service rendered by the president or professor at his residence is as indispensable to the carrying on of the institution as the service rendered in the class-room or office; in others the use of houses for purposes of residence could easily be abandoned, and the houses converted into conference rooms, libraries, or laboratories; other institutions have no

real estate covered by the terms of the Bill and would therefore suffer no immediate loss. But all these institutions are firmly united in this remonstrance, seeing clearly that their common service to higher education is endangered by the threatened impairment of public confidence in the fidelity of Massachusetts to its own great traditions.

On the other hand, the pecuniary proceeds of the Bill would be absolutely insignificant as resources for ordinary town or city expenses; and so far as they crippled the institutions affected they would harm and not help the real pecuniary interests of the towns or cities in which the institutions are situated. The prosperity of the exempted institutions and that of the towns or cities which harbor them are not divisible or distinct. They are one.

In short, the Bill is capable of doing much harm but no good.

CHARLES W. ELIOT, *President of Harvard University, Cambridge.*
CHARLES G. WASHBURN, *President of Trustees of Polytechnic Institute, Worcester.*
JOHN J. WILLIAMS, *Archbishop of Boston.*
HENRY LEFAVOUR, *President of Simmons College, Boston.*
MARY E. WOOLLEY, *President of Mt. Holyoke College, South Hadley.*
EZRA H. BAKER, *Treasurer of Radcliffe College, Cambridge.*
ELLEN F. PENDLETON, *Acting President of Wellesley College, Wellesley.*
THOMAS E. MURPHY, S. J., *President of Holy Cross College, Worcester.*
WILLIAM E. HUNTINGTON, *President of Boston University, Boston.*
THOMAS I. GASSON, S. J., *President of Boston College, Boston.*
HENRY HOPKINS, *President of Williams College, Williamstown.*
ALFRED E. STEARNS, *Principal of Phillips Academy and President of the Theological Seminary, Andover.*
GEORGE HARRIS, *President of Amherst College, Amherst.*
HENRY S. PRITCHETT, *President of the Massachusetts Institute of Technology, Boston.*
GEORGE HODGES, *Dean of the Episcopal Theological School, Cambridge.*
THEODORE F. WRIGHT, *Dean of the New Church Theological School, Cambridge.*
NATHAN E. WOOD, *President of the Newton Theological Institute, Newton.*
L. CLARK SEELYE, *President of Smith College, Northampton.*
SAMUEL H. LEE, *President of American International College, Springfield.*
M. F. DICKINSON, *President of the Board of Trustees of Williston Seminary, Easthampton.*
FREDERICK W. HAMILTON, *President of Tufts College, College Hill.*
G. STANLEY HALL, *President of Clark University, Worcester.*

BOSTON, April 17, 1907.

LETTERS TO MEMBERS OF THE LEGISLATURE.

Boston, April 17, 1907.

To the Honorable Senate: —

The attention of Senators is called to the fact that Senate Bill 290, relating to taxation of college property, which comes up for discussion in the Senate, April 18, is a departure from the long settled policy of this Commonwealth. College authorities and friends of education throughout the State believe that the passage of the bill would certainly inflict very great injury upon these institutions. It provides for the taxation of "such real estate belonging to any college or university or scientific institution authorized to grant degrees as is occupied as a residence by an officer of instruction, administration or government of such college, university or scientific institution."

How Mt. Holyoke College would be affected by this legislation is stated by Miss Mary E. Woolley, President of that institution.

"Number of students this year, 735.

"Teaching staff, 110.

"We have seven large dormitories, each accommodating from sixty-five to one hundred and twenty-five occupants.

"From seven eighths to eight ninths of our students, and nearly two thirds of our teaching-staff, are in dormitories.

"These buildings serve three purposes,— those of recitation rooms, living rooms and dining rooms.

"I myself reside in one of the dormitories and have no other residence. The same is true of the great body of our teachers."

If the bill should become a law, every one of these dormitories would be taxed.

The same conditions apply in greater or less degree to Smith College, Radcliffe College, Simmons College and the other educational institutions for women; and to a less degree to most of the men's colleges. For example, the numerous college dormitories at Harvard are provided with Proctors, who look out for the good order of students in the buildings. All these Proctors are either Instructors, Professors or Assistant Professors. Other colleges generally have administrative officers living in their dormitories.

G. Stanley Hall, LL. D., President of Clark University, Worcester, who lives in a detached house on land belonging to the University, writes upon presidents' houses as follows: —

"Every Monday night during term time, for seventeen years I have had from twenty to fifty men in my parlor, from seven to half past ten or eleven o'clock. Four afternoons every week I meet my students there, one each half hour. My library supplements that of the University, and any student can come in any time and take a book, leaving his card. I have sometimes had one hundred and fifty out at once. Add to that the fact that as we have no good hotel near, my house has been a hotel for almost every visitor, to say nothing of socials and receptions, and that, though I have an office across the road, much of the office work is done at my house,— all this makes it preposterous to consider the house I live in as a private residence. My library, particularly, is open any time to students, who can come in often without ringing and help themselves, and this destroys the privacy of the lower floor."

President Hall's experience is not exceptional, but only fairly illustrative of the educational uses to which the residences of college presidents are put. And so in less degree of professors' houses standing on college land. Every director of an observatory must live close by the observatory itself; for he is liable to be called there at any hour of the night. Besides, the bill in its present form is broad enough to include even observatories themselves in cases where that building and the director's residence happen to be under the same roof or are joined together in one group.

M. F. DICKINSON, for
AMHERST COLLEGE,
SMITH COLLEGE,
MT. HOLYOKE COLLEGE.

HARVARD UNIVERSITY,
CAMBRIDGE, April 16, 1907.

DEAR SIR: —

I am informed that during the consideration of the bill for the taxation of certain college property, as finally reported by the Joint Committee on Taxation, weight was attached to the allegation that Harvard University would not be much affected by the taxation of professors' houses, and was therefore not seriously opposed to such taxation. I beg to correct this construction of my remarks on that subject.

At the hearing given by the Recess Committee on October 23, 1906, I said: —

> "In some places this issue is a very small one to-day; in others it is vital. You need not hesitate, gentlemen, out of consideration for Harvard College, to force the Corporation to dispose of the five or six professors' houses they still own. They are burdensome pieces of property, and are no longer needed for professors. They are desirable, however, for a few deans or other administrative officers. A house for the President still seems a necessity at Harvard, as at other similar institutions. I may add that, seeing this necessity, the poor Province of Massachusetts, in 1726, paid more than half the cost of building a handsome president's house at Cambridge. Are we going back on that, gentlemen? Is there a man here who would be willing to go back in these prosperous days on that act of the Province of Massachusetts in the time of its poverty?"

Again, at the hearing on March 13, 1907, referring to the proposal to tax professors' houses and dormitories in Cambridge: —

> "Such legislation would not ruin Harvard University; it would simply divert $19,000 a year, or four professors' salaries, from teaching purposes to the ordinary Cambridge objects of municipal expenditure; but so far as it went it would be nothing but an injury to Harvard University, and whoever advocates it is advocating the diversion of money heretofore used for educational purposes to lower public uses, namely, city expenses. So far forth, he is impairing the Massachusetts faith in education as the supreme public interest."

The fact that Harvard University may have less to lose from the immediate effects of the present bill than Boston College, Tufts College, or Wellesley College, is not relevant. The interest of Harvard University is inseparable from that of all the other colleges and universities in Massachusetts on the fundamental question whether the Commonwealth shall abandon its traditional policy in support of higher education.

The general fact that every town or city that harbors a college receives a material compensation for the exemption of the college from taxation, in the form of higher neighboring valuations, hardly needs further argument. It was proved beyond the shadow of a doubt by the figures submitted to the Recess Committee on Taxation, and to the Committee of the present Legislature. If there were any evidence that college-owned houses used as residences for pro-

fessors menaced the operation of this rule of compensation, there might be some justification for the present bill. In the absence of such evidence, the bill can be regarded only in one light, namely, as an attempt to weaken the foundations of the exemption policy. The fact that the bill works but slight harm to certain institutions is no argument in its favor. It attacks the vitals of other institutions, and, as an entering wedge, it threatens the serviceableness of every endowed college, university, and scientific institution in the State.

Very truly yours,

CHARLES W. ELIOT.

THE TAXATION OF PROPERTY OF EDUCATIONAL INSTITUTIONS.

THE TAXATION OF PROPERTY OF EDUCATIONAL INSTITUTIONS.

The bill taxing the property of colleges, universities and scientific institutions **ought not to pass** because

1. It is a tax on education.

The property described in the bill, so far as it is now legally exempt, is exempt only for the reason that its use is indispensable to, or closely identified with, the educational purposes of the several institutions.

The effect of the bill is to diminish the financial resources of the institutions affected, by taking funds now applied to the public use of education and applying them to other public uses, namely, the running expenses of towns and cities.

2. If any abuse exists at present through the exemption of property owned by educational institutions, but put to purely private uses, a complete remedy is provided by the existing law.

The property described in the bill is already taxable in any case in which it can be shown to the satisfaction of the Court that the use made of the residence is private and not associated with the educational purposes of the institution. Mere occupation by a professor of a house that happens to be owned by a college does not carry exemption. (See Williams College *vs.* Williamstown, 167 Mass, 505.)

3. The occupation of dwelling-houses on the college grounds or campus by professors and administrative officers promotes the educational purposes of the several institutions.

It is universally agreed that it is highly advantageous for any college to have the daily life of its teachers associated as closely

as possible with that of its students, and that the maintenance of professors' houses on college grounds promotes that association. It is a matter of common regret that, as an incident to the growth of the colleges in number of teachers and students, there has been an unavoidable decrease in this association; for a majority of the teachers in most colleges must now live in private, tax-paying houses. The more reason exists for retaining the few houses that remain on college grounds.

In nearly every college in the state the residence of the president on the college grounds is as essential to the proper performance of his duties as his use of his office. The same principle applies to many other administrative officers.

4. A liberal construction of the Statute, as regards the educational use of exempt dwellings, has had the repeated sanction of the Supreme Court.

"The Statute is not to be construed narrowly, but in a fair and liberal sense, and so as to promote that spirit of learning, charity and benevolence, which it has always been one of the fundamental objects of the people of this state to encourage." (175 Mass. at p. 125.)

5. The bill violates the tradition and the approved policy of Massachusetts and of the whole nation.

It withdraws a privilege sanctioned by Massachusetts law and custom of nearly three centuries' duration.

The encouragement of education has been a prominent characteristic of the American people from the earliest times. There have been two methods of encouragement: (1) the exemption of property devoted to educational purposes; (2) direct aid or support. In a majority of the states both methods are used.

6. The abandonment of this time-honored policy can be justified, if at all, on only two grounds: first, that the policy has failed as a means of promoting education; or, second, that it imposes an intolerable burden.

The leadership of Massachusetts in education and the service-

ableness of its colleges and universities cannot be seriously questioned by any intelligent citizen. These are not matters of dispute.

The exemption of college property from taxation has placed no burden on the towns and cities in which it is situated. Their tax rates are no higher and their percentage of taxable property no lower than those of other cities or towns of the same size or locality which contain no exempt college property. (See figures in appendix to President Eliot's remarks before the Recess Committee, October 23, 1906.) The repeated demonstrations of these two facts are unassailable.

7. The policy of exemption is supported not only by tradition, but also by recent expert judgment and by public opinion.

Three special committees of the Legislature have reported against bills to tax college property, declaring that exemption has placed no burden on college towns and cities and that the present law ought not to be changed (1874; 1897; 1906).

The representatives of all the institutions of higher education in Massachusetts, some of which would incur no new liability to taxation under the proposed law, have solemnly and earnestly protested against it as a menace to the cause of education. These men and women are disinterested in the best sense of the word and the people of Massachusetts know it.

The newspapers of Massachusetts without respect to local or political differences reflect a strong public opinion against the bill. Witness the articles in the editorial columns of the Boston Post, Traveler, Herald, Journal, Advertiser, and Transcript of April 18, of the Springfield Republican of April 19, and of the Boston Traveler, Herald, and Transcript of April 23.

8. The present bill is a step backward; a reversal of a policy maintained since the founding of the Commonwealth. As such it threatens the stability and serviceableness of all endowed institutions of education, religion, and charity, for it impairs the confidence of benefactors in the traditional favor and protection of the state.

In the states which support universities by public taxation,

the appropriations for the support of higher education tend to mount with the property valuations in their rapidly growing communities. The states which rely on private endowments for the support of higher education must depend on the steady stream of private benefactions — benefactions coming in large measure from other states. (Between six and seven millions of dollars are estimated as having come into Massachusetts in this way during the last ten years.) That stream is threatened by the very introduction of the present bill.

CHARLES G. WASHBURN, *Worcester Polytechnic Institute*
THOMAS I. GASSON, S. J., *Boston College*
DANIEL MERRIMAN, *Williams College.*
MARY E. WOOLLEY, *Mt. Holyoke College.*
FREDERICK W. HAMILTON, *Tufts College*

Committee appointed by the Conference of Massachusetts Colleges, Universities, and Scientific Institutions, held at Boston, April 17, 1907.

WHAT THE NEWSPAPERS THINK OF THE BILL TO TAX COLLEGE PROPERTY.

WHAT THE NEWSPAPERS THINK OF THE BILL TO TAX COLLEGE PROPERTY.

BOSTON HERALD EDITORIAL, APRIL 18, 1907.

The whole Massachusetts people are interested in defeating the attempt to curtail college resources by taxing college houses in which professors live. No amount of sophistry or demagoguery can make this proposition anything else except a scheme to increase the cost of obtaining a college education. A young man pays in tuition an average of about fifty per cent. of what the instruction costs the institution, and less than this when he has a scholarship. This low cost is made possible by endowments. The form which the public gives to its endowment of colleges is an exemption from taxation on property. To decrease this public contribution by taxing professors' houses is to diminish the sums applicable to raising the standard of efficiency and to reducing the tuition....

The Commonwealth might better pay a bounty for every graduate of a standard college than enter upon a policy of looting college treasuries. What citizen of Massachusetts can say he never received a benefit from the work of those who were given college education under the present system? Streets and parks are laid out, bridges constructed, buildings planned, sanitation developed, schools taught, and books written by graduates of colleges. He who makes it harder to get a college education retards the development of knowledge which benefits every citizen.

BOSTON HERALD EDITORIAL, APRIL 23, 1907.

The advocates of taxing college houses occupied by professors threw overboard pretty nearly all their ballast yesterday and thus contrived to float their balloon safely out of the Senate. A hasty computation after the Macleod amendment was made known indi-

cated that the bill as passed in the upper branch exempts entirely some institutions, nearly all of whose property would have been taxed under the original draft, and that taking the state as a whole only a small fraction of the tax at first proposed would be assessed. It is probable that the amount of money to be raised will hardly be worth what it costs. Practically all the sponsors of the bill have saved is their faces.

The Macleod amendment provides that no college building shall be taxed unless more than half of it is occupied by an officer, and that of any building only the part so occupied, or its value, shall be assessed. This exempts dormitories and practically restricts the application to houses used solely as residences, but situated on college property.

Why abandon an ancient grant to education for a yield so unimportant? The bill reduces the fund available for education. It is wrong in principle. It may prove an entering wedge. The House should have the intelligence to reject it.

BOSTON HERALD EDITORIAL, MAY 2, 1907.

The bill now before the House to tax a part of the college properties should be entitled: "An act to make the higher education more expensive and difficult for poor students."

Whatever the motive back of the measure, this would be its effect. In taxing the college property used for residential purposes by professors or officials of the institutions, it would diminish by so much the financial resources of the college. This loss must be made good by new gifts, by increased fees or by diminished efficiency in instruction and equipment.

Do the representatives in the popular branch of the Legislature desire to meet the issue, in primaries or at the polls, that they voted to make college education more costly to the sons and daughters of poor men whose laudable ambition is to give to their children the best possible mental training?

Many cities and towns in different states have voted to exempt manufacturing establishments from taxation for a long term of years, in order to secure the benefit of the occupation and wages which these industries would bring to them. Is it in accordance with Massachusetts traditions and ideas to tax colleges and exempt shoe factories?

What would Cambridge be without Harvard, or the other college towns of the state without their colleges?

The committee of these institutions wisely admonished the legislators that "the present bill is a tax on education — a step backward — a reversal of the policy maintained since the founding of the commonwealth."

Kill it!

BOSTON JOURNAL EDITORIAL, APRIL 18, 1907.

It was a very remarkable and significant meeting at the Boston rooms of Harvard University yesterday, when representatives of about every college and theological school in the State gathered into a sort of council of war to plan the fight against the proposition now before the Legislature to tax such college property as is used as residences by members of the college faculty. The bill was reported in the Senate last week, and to the prompt action of President Eliot in calling the cohorts together is due this vigorous and impressive protest.

All barriers of sect and policies are thrown down in this general uprising of the higher educators of Massachusetts. Without exception they seem to agree that the proposed measure is the entering wedge, or the head of the camel in the Arab's tent. If houses occupied by college professors, but owned by the college, were to be taxed, there would be no rest on the part of those who believe in the practise of taxing learning, until other properties would be included and college work seriously crippled. "In short," as the protest signed by the university men yesterday says, "the bill is capable of doing much harm, but no good."

The amount of money to be gained by a city or town in taxing collegiate residences would be small, indeed. In itself it would neither help a community nor harm a college. It is the principle of the thing and the grave peril of its extension that must be fought. Nothing should be permitted, to quote again the language of the protest, to "impair the confidence of the American public in the permanence of the Massachusetts policy of promoting education, religion, and charity by encouraging endowments and exempting them from taxation."

BOSTON POST EDITORIAL, APRIL 18, 1907.

One hundred and eighty years ago the Province of Massachusetts paid more than half the cost of building a house for the president of the university at Cambridge. The Constitution of Massachusetts, describing these men of the poor and struggling colony as "our wise and pious ancestors," provides that the "officers and servants" of the university shall continue to hold and enjoy the privileges conferred upon them.

It is now proposed to rescind the exemption from taxation which college property has enjoyed all these years to the extent of subjecting to levy such property as is used for residences by officers and instructors in our institutions of learning. This would be a repudiation of the policy established for this Commonwealth in its very foundation and cherished as a precious tradition.

A great mistake will be made if this shall be done. It is not a matter of mere sentiment. It is a matter of practical, business common sense. College property held for gainful investment is properly subject to taxation. College property in use for educational purposes should remain exempt, as it has been from the beginning, because it adds an "unearned increment" to all other property in the community in which it is situated.

This fact is provable and is recognized. And, in designating such exempt property, the residences of officers and instructors must be included as well as that which is used as lecture rooms or dormitories for students. It is all part of the same system; the line of demarcation cannot be drawn, for it does not exist.

The meeting of the heads of Massachusetts educational institutions in Boston yesterday, numbering more than a score, set forth in its protest the real sentiment of the people of the Commonwealth. The increase of the State revenue by the proposed bill is insignificant; the detriment to the higher education and the offence to the moral sense of the public would be lamentable.

BOSTON EVENING RECORD EDITORIAL, APRIL 18, 1907.

....It will be a backward step indeed if Massachusetts, at this time in her history, reverses her principles, and instead of promoting, threatens the serviceableness of every endowed college, university, and scientific institution in the State.

BOSTON EVENING TRANSCRIPT EDITORIAL, APRIL 18, 1907.

The gathering of representatives of almost every one of the higher educational institutions of the State, in this city, to protest formally against the bill to tax such college property as is used for residences by members of the college faculties, indicates that in that proposed legislation they recognized great danger to the educational interests of the Commonwealth. The consensus of opinion which was formulated and unanimously signed gave very strong and valid reasons for opposition, but while that was opportune as far as the Legislature was concerned, we do not believe it was necessary to convince the thinking people of this State that the bill was against the public welfare. It proposes a backward and a downward step. It is a shock to the pride that is felt in the educational policy of the past in Massachusetts. It is a violation of traditions and practice and a contradiction of the high claims we have made on the basis of general enlightenment.

It serves notice that the "cherishing" policy, which is older in inception than the Commonwealth itself, is to be given up. Bad as this measure is in itself it does not fully reveal the subtle and sinister purpose that lies beyond. Tax the professors' residences where college meetings are held, and then when the public have become accustomed to it, next include the dormitories, and finally all the grounds and buildings of an institution. In fact, the dormitories have been named as legitimate objects of taxation by those behind this movement, but discovering that such an attempt would be likely to fail, they are now trying to carry only the outer works at present, hoping to capture the whole educational citadel later.

This is not merely humiliating to the pride of the State, but, as Dr. Eliot has said, it would be a blow to her educational prestige. She could no longer maintain that splendid competition which has so distinguished her. Never before has the great West, especially the middle section of it, been doing so much for education as it is doing to-day. At a recent dinner of the alumni of Michigan University at Chicago, President Angell of that institution said: "The greatest single characteristic of the people of the Middle West is their passion for education," and that he declared was his answer when a visitor from a foreign land asked him what was the distinguishing feature of the people in that part of the country. That passion is being encouraged and developed not only by the States, but by all their

individual units. A proposition like that before our Legislature would be indignantly ruled out of court in any one of those Commonwealths.

This noble passion is as manifest in Massachusetts as in Michigan. It is filling to overflowing all our higher institutions. How are we to meet it and provide for it? By reducing the power to serve it, is the answer given by those who would tax our colleges and universities. That is the message that they would have Massachusetts, the mother of scholars and statesmen, send out to the world. Our institutions are not asking for that public generosity which is being extended to those of a similar class in the West, though results have justified it there. They simply ask that the wise conservatism and "cherishing" policy which has given them their present power and distinction shall be maintained inviolate. The demands upon our colleges and universities are growing greater all the time. We can hardly believe it possible that under such circumstances a Massachusetts Legislature will declare in favor of a course that will increase their burdens and injure their prospects.

BOSTON EVENING TRANSCRIPT EDITORIAL, APRIL 23, 1907.

So far as it was able yesterday the Senate put this proud old Commonwealth in the retrogressive class of States, in passing to a third reading the bill to tax college property on college grounds, used for residential purposes by faculty members. A crude and unmeaning amendment was attached to the measure on motion of Senator Macleod of Middlesex to the effect that no such building should be taxed unless more than half of it was used for such residential purposes and that no part not thus used should be taxed. That would exempt the professor's study, we suppose, and perhaps the closets where the preceptorial gowns were hung. The ultimate purpose of this reactionary measure has been but thinly disguised. This is only the first step. The dormitories would come next should this bill pass. Already other States are taking notice of this humiliating situation. The New York Evening Post recounts the States of the Middle West that are increasing taxation for educational purposes, and says: "With encouragement of this kind offered in the newer sections of the country, it is indeed strange to see fresh obstacles put in the way of the Eastern

institutions which must continue to depend on private endowment." By this action of the Senate the educational prestige of the State is menaced as it has never been before.

BOSTON EVENING TRANSCRIPT EDITORIAL, MAY 3, 1907.

The House has rarely if ever done a better and more decisive piece of work than in its action of yesterday, killing beyond resurrection the bill which proposed the first step toward the taxation of general college property. It was not simply a defeat; it was a rout. The vote in opposition, or rather in condemnation, stood almost ten to one. For nearly two years this bill has been a nightmare. The educators of the State have been a unit against it; the press has generally denounced it, and since the Senate gave it is inexplicable approval the opposition has been reënforced by resolutions of religious bodies, manufacturing and commercial associations, and the voice of the public so far as that could be ascertained. The House has saved Massachusetts from a great humiliation. It has shown itself, and not for the first time this session, more conservative and rational in its treatment of a vital public question than the Senate. It has kept inviolate a policy that has given the State its great prestige as a leader in educational movements and it deserves the thanks of the people of this Commonwealth as the guardian of her best traditions and highest ideals.

BOSTON TRAVELER EDITORIAL, APRIL 18, 1907.

The pending bill before the Legislature to tax college property is a distinctly dangerous and pernicious measure. The revenue which the State would derive, if it were passed, would be insignificant. If passed, it would open the door to the discussion of the larger question of the taxation of church property. The Feiker Bill should be beaten so decisively this year that it will not come up again for a long time.

BOSTON TRAVELER EDITORIAL, APRIL 23, 1907.

The New York Evening Post waxes sarcastic over the attempt by certain interests in Massachusetts to tax the property of educational

institutions, and holds that the proposed bill is new evidence of the spirit which has been manifested of late years in the college towns of New England, to tax and oppress certain college property.

It is, and fairly may be, regarded as a strange phenomenon that Massachusetts, the pioneer state in the fostering of public education, should take part in a movement like this at a time when the western states are treating higher education with unprecedented liberality.

Michigan, Minnesota, and other western states tax all the property in the state to help support their universities, and are voluntarily raising their rate of taxation for education. The Wisconsin Legislature recently raised the university tax to two-fifths of a mill on every dollar of assessment.

As the Post says, with encouragement of this kind offered in the newer sections of this country, it is indeed strange to see fresh obstacles put in the way of the eastern institutions, which must continue to depend on private endowment.

It is too bad that Senators Feiker and Macleod could not settle their private quarrels with the college authorities in their home cities without taking up the time of the Legislature to consider such a bill.

FALL RIVER NEWS EDITORIAL, APRIL 26, 1907.

The Senate has gone on record in favor of the college taxation bill reported by the committee on taxation. This bill proposes merely the taxation of college property used for residence purposes. This is a mere entering wedge. The amount of property involved is not large. Should the bill pass and be approved by the governor it would not afford any material relief in the college towns, so small would be the total of the property brought under taxation by it in any given town. The thing to be gained by the advocates of the bill is to establish a precedent in favor of the taxation of property used for educational purposes.

How this measure strikes outsiders appears from the criticism of it by the New York Evening Post, which regards it as a very strange phenomenon that Massachusetts, "the pioneer state in the fostering of public education," should take part in a movement like this when Western States are treating higher institutions of learning with unprecedented liberality. "Every dollar's worth of property in Mich-

igan, Minnesota, and other Western States is levied upon annually for the support of the state universities." Not only so, these states are voluntarily raising their rate of taxation for education. The Wisconsin Legislature, for example, recently raised the tax for the support of the state university to two-fifths of a mill on every dollar of valuation. Noting such facts, the Post remarks: "With the encouragement of this kind offered in the newer sections of the country, it is indeed strange to see fresh obstacles put in the way of the eastern institutions which must continue to depend on private endowment."

This criticism of the Post applies, not to the people of Massachusetts, and we yet hope not to its legislature, but only to a majority of its senators.

The people have shown no sign of approving such legislation, and are not likely to show it. The great body of voters are clearly opposed to the levy of taxes on the educational institutions of the state. If private beneficence will build and endow such institutions, surely the public can afford to stand the burden of exempting them from taxation. We hope the house will take this view.

MEDFORD MERCURY EDITORIAL, APRIL 26, 1907.

The bill before the legislature for taxing the houses owned by educational institutions which are occupied by members of the faculty is merely an entering wedge for taxing education on a greater scale. If this bill passes, it is only a step to taxing dormitories, and another step to taxing all the rest of the buildings and the grounds of the colleges and other institutions which have made the various communities what they are and which have been the chief glory of the commonwealth.

Education is the corner stone of intelligence and free government. Everything which makes it more difficult and expensive for the son of a poor man or one of moderate means to obtain an education is unwise and against public policy. Moreover, it is a short-sighted economy which attempts to place an additional tax on education.

The passage of the bill by the senate on Wednesday was a retrograde movement of which several of the members rightly said the senate should be heartily ashamed. It is a pleasure, however, to know that the senator from this district, Hon. Herbert S. Riley, spoke and voted against the bill.

The average common sense member of the lower house, it is believed, will see that it is against public interest and contrary to the welfare of the great mass of the people to place any additional obstacles to a poor young man securing an education and will promptly bury the measure.

PROVIDENCE BULLETIN EDITORIAL, APRIL 23, 1907.

In the Massachusetts Senate yesterday a bill to tax college property used for purposes of residence was passed to a third reading. President Eliot of Harvard and many other college presidents have protested against the measure, but to no avail, except to secure a change in the act by which dormitories are exempt from taxation. The argument of those who are in favor of assessing the houses of the presidents and professors which belong to educational institutions is that preachers are compelled to pay a tax upon their property and so is the Governor of the Commonwealth. An altogether perverted spirit is shown in this attempt to make college property contribute funds to the common treasury. No educational institutions except the private schools are engaged in making money. The men and women who teach in colleges are most inadequately paid for the large services they perform for the students and indirectly for the public and the whole nation. Whatever tends to make life more cramped and irksome for professors and teachers, whatever lessens their income, makes them less useful as workers in one of the highest fields of human effort. In many commonwealths the State makes large contributions in funds to its educational institutions. Maine, which in comparison with Massachusetts is almost poverty-stricken, last year appropriated eighty-five thousand dollars for the support of its State university. The Commonwealth of Massachusetts, which possesses the oldest university in the New World, is displaying distressing ingratitude and pitifully poor judgment in passing to a third reading this bill for the taxation of college property.

SPRINGFIELD REPUBLICAN EDITORIAL, APRIL 19, 1907.

The colleges in Massachusetts have contributed largely to the advantage and glory of the state, and through the gifts of private

citizens — very occasionally reinforced by a small amount of aid from the State — have saved the Commonwealth from having to support its own institutions in the higher branches of education. Having been so benefited, it is clear that Massachusetts owes special consideration to her colleges. It is right and wise in the broad point of view to favor them a good deal in the way of taxation. Such has been the policy of the past, and no sufficient reason exists for changing it.

It is not to be wondered at, therefore, that the representatives of these institutions, under the lead of President Eliot, have decided to make an emphatic stand against the movement which would open the way to changing the practice of the State. It is strongly held that if houses occupied by college professors, but owned by the colleges, should be taxed, there would be no rest on the part of those who believe in taxing such institutions until other property should be included, and in the end an onerous and most hampering burden be created that must seriously cripple the colleges. The amount of advantage involved in the proposed change to any city or town would be small in the first instance, and therefore the disposition to increase it would grow naturally and rapidly. The college people make their stand at the point where it is proposed to drive the entering wedge.

There is power in the proposition that nothing should be permitted to "imperil the confidence of the American public in the permanence of the Massachusetts policy of promoting education, religion, and charity by encouraging endowments and exempting them from taxation." It is to be kept in mind that our colleges appeal far beyond the borders of the State. In many cases their largest benefactors are resident elsewhere, and it would act as a positive discouragement to such giving if these endowments were to be subjected to taxation. Every gift which comes from outside the commonwealth helps to enlarge our educational facilities and to benefit our people in widely increasing measure. Let it get abroad that the State is disposed to deal ungenerously by such gifts, and we shall have done a good deal to stop the flow of them.

The benefit which comes to any community which possesses a college is not easily over-estimated. Its presence has a tendency to add to the value of local property in a degree out of all proportion to the little gain that would come out of the measure of taxation that is now being so emphatically challenged by the colleges. From the

large point of view the public interest is on the side of the protestants, and the stand taken by the colleges is to be respected on the practical side, let alone the higher considerations involved.

NEW YORK EVENING POST EDITORIAL, APRIL 19, 1907.

The historic Massachusetts policy of exempting from taxation the property of educational institutions is attacked by a bill now pending in the Legislature opening to taxation "such real estate . . . as is occupied as a residence by an officer of instruction, administration, or government." This is a bill which would make relatively little practical difference to any of the colleges within the State, and to some, perhaps none at all; but its very proposal is new evidence of the disposition which has been manifested, we believe, in some of the smaller college towns of New England to tax certain college property. It is a strange phenomenon that Massachusetts, the pioneer State in the fostering of public education, should take part in a movement like this at a time when the Western States are treating higher education with unprecedented liberality. While Cambridge and Williamstown are begrudging the sum that would accrue to their treasuries if certain college property were in private hands, every dollar's worth of property in Michigan, Minnesota, and other Western States is levied upon annually for the support of the State universities. Not only that, but these States are voluntarily raising their rate of taxation for education. The Wisconsin Legislature, for instance, recently raised the University tax to two-fifths of a mill on every dollar of assessment. With encouragement of this kind offered in the newer sections of the country, it is indeed strange to see fresh obstacles put in the way of the Eastern institutions which must continue to depend on private endowment.

NEW YORK EVENING POST EDITORIAL, MAY 7, 1907.

In rejecting the bill for taxing residential property belonging to colleges and universities, the Massachusetts House of Representatives has shown itself true to the best traditions of the State. The Senate had passed this measure by a small majority, though discussion of the merits of the case had already shown that there was no reason

for supposing that the growth of exempted property was imposing upon any town or city a burden which was not more than outweighed by the advantages flowing from the presence of an institution of learning. Only last summer the whole question was studied by a special committee of the Legislature, which came to the conclusion that "the financial conditions of all the college towns are as satisfactory as those found in the great majority of our communities." The action of the Senate, therefore, came as an unpleasant surprise to all friends of education. But in the House, the proposal was defeated by a vote of 142 to 14, after a debate which made it clear that the historic policy of the commonwealth is not likely to be changed at the behest of a few demagogues and malcontents. That the proposal could even be seriously considered was discreditable in itself; but the decisive action of the Representatives will go far to rehabilitate Massachusetts in the estimation of the other States.

HARPER'S WEEKLY EDITORIAL, MAY 4, 1907.

The universities and colleges in Massachusetts are up and doing, and President Eliot is their leader. Moreover, the newspapers and churches of the State are taking a hand in the conflict. The cause of the uprising is a favorable report on a bill before the State Legislature providing for the taxation of the houses of presidents and professors of institutions of learning. The tax would be very small. To some of the colleges, to Harvard especially, it would be an inconsiderable burden; to others it would be greater; but all are standing together, for the very little profit which such a tax would bring to the several towns indicates to the minds of Dr. Eliot and his associates that the bill is intended as but an entering wedge, and that those who favor it are intent upon eventually taxing all college property. This is also the view taken by the newspapers of the State, notably by the Springfield Republican, the Boston Herald, the Boston Journal, the Boston Post, and the Boston Transcript. The real interest of the incident is to be found in the issue as it is stated by Dr. Eliot. He says, and he is followed by the others, that this is a movement to revolutionize the historic relation of the State towards higher education. Other States, notably the Western States, support their own universities, and the towns in which these universities are situated

not only do not desire to tax their property, but willingly pay their contributions to the support of the State institutions. Massachusetts pays practically nothing directly for the support of higher education, but aids it by exempting the property of universities and colleges from taxation. The Supreme Court of the State has decided that the houses sought to be taxed by the pending bill are within the exemption. With the exception of some inconsiderable sums given by the State in the eighteenth and early nineteenth centuries especially, higher education has been supported by private gifts made largely by the citizens of other States. When this money has been given, the State has promised through its laws that none of it should be taxed. This exemption was the contribution of Massachusetts to higher education. To tax college property now would be a reversal of the State's attitude towards education, and would imply a refusal to make any contribution to a cause which Massachusetts has always been supposed to have peculiarly at heart.

HARPER'S WEEKLY EDITORIAL, MAY 25, 1907.

As a censorious remark was made in these columns on the fealty to ignorance displayed, unexpectedly to the outside world, by the Massachusetts Senate, it is only fair to inform those who did not know that the proposition was defeated by the Massachusetts House of Representatives by a vote of more than one hundred and forty to fourteen. This affair is an illustration of the mental and moral size of some legislators of modern times. The people of Massachusetts do not desire to tax education, but some active and minute minds in the few college towns of the State are at the bottom of the ungenerous and unintellectual movement. These minds being aggressive and busy in politics, a Senator who has one college town in his district feels that he can better afford to vote in accordance with the desires of the active college town than to express the passivity of the twenty or twenty-five non-college towns of his district. On the other hand, the mere Representative, not having the fear of those who would wring money from the colleges for their own benefit, is free to express his own views and the views of his own people. The relief from the fear of the burden of taxation is great. It is one of the boasts of New England colleges and universities that no young man shall be turned

away merely because he has no money. This is not only the boast, but, in one way or another, it is vindicated. But some poor young men are forced to do so much to pay their way that their pursuit of education is greatly hampered. There is no college in New England that has sufficient money for the poor men who desire its teaching. A large part of the money given to the college is directed by the donors to be used for specific purposes, to construct or maintain buildings for designated purposes. What colleges chiefly need in the way of money is for better instruction and for larger charities, to the end that the time of the poor boy, while he is in college, may be devoted to the getting of the education that he seeks. Taxation of college properties would maim the teaching and abridge the charities — that is, would impair the usefulness of the institutions that are doing most for the civilization of the future.

LIFE EDITORIAL, MAY 16, 1907.

The Massachusetts colleges make vehement complaint of the new policy of their State in taxing college property. At yet, we believe, the intention is that only the professors' houses, owned by the colleges, shall be taxed, but the colleges object even to that, and argue that once taxation of college property begins there is no telling how far it will go.

It is a curious proceeding for Massachusetts. There is no State so famous as she is for her colleges, and no State whose colleges cost her less. Not one of them that we recall is supported by taxation. All, or nearly all of them, are endowed by the gifts of individuals, from which and from the tuition fees of students they derive their support. Moreover, the Massachusetts colleges have long been, and are constantly being, enriched by the benefactions of citizens of other States. It is the more ungracious and surprising of the State to tax them.

Of course, the colleges can stand a certain amount of taxation, and will doubtless rather pay than move out of the State. Indeed, the amounts of money demanded are said to be as yet not very serious. But can Massachusetts afford to demand them?

OPINIONS OF TWO EMINENT CITIZENS.

REV. EDWARD EVERETT HALE, D.D., CHAPLAIN OF THE UNITED STATES SENATE.

To the Editor of the Transcript:—

I have supposed that Cambridge, Somerville, Worcester, Amherst, Northampton, Wellesley, and Williamstown were proud of being college towns. It is a very philistine way of showing pride to tax every poor boy or girl who comes to one of our colleges — so that the permanent "residents" may have their expenses paid by somebody else. But this is the English of it. It is as if Westminster Abbey should charge me a shilling when I wanted to worship there.

To tell the whole truth, it would be a very mean thing.

I have been away all winter, but I have followed this discussion with amazement and regret — regret that the Commonwealth should be trying to make a penny out of its colleges, as if they were ice or granite. We used to say that those were the only natural products which we sold to the outsiders.

39 Highland Street, Roxbury, April 22, 1907.

COL. THOMAS WENTWORTH HIGGINSON.

To the Editor of the Herald:—

Will you allow me to express the regret I feel at the effort now being made for the passage of Senate bill No. 290 through the Massachusetts Legislature, and the earnest hope I entertain that it will be decisively rejected. I write as one unconnected with any college or university, though born and bred in a college town and residing permanently at my birthplace. Long observation satisfies me that the compensation of college teachers is habitually too limited, and the disadvantages of the poorer class of students too great to justify an increase of these evils by the taxation of such collegiate real estate as is occupied by instructors. Such taxation is to my mind most objectionable. I have seen too many able men, in years past, turned from the work of

instruction by the actual needs of their families, and too many students who have injured health and perhaps shortened life by extreme abstinence in respect to food. Every lifelong resident of a college town has known such instances, and has contributed to relieve such distresses. On the other hand the increasing wealth of the community sends to every college or university a richer class of students for whom are sure to be erected costlier buildings outside the college yard and sure to yield to the town or city where they are placed an amount in taxes far beyond what could be gained to the public treasury by the enforced taxation of a few professors' houses. To press this narrower and severer method is, in my humble judgment, to look quite in the wrong direction. For one, I am not so anxious to diminish my modest tax bill as I am to do fair and even liberal justice to the great institution which has been the basis of our city's growth.

29 Buckingham Street, Cambridge, April 21, 1907

A BRIEF FOR THE COLLEGES.

1906 SENATE BILL NO. 106.

Relative to the Taxation of Certain Property of Educational Institutions.

Argument in Opposition to the Bill.

This bill provides for the amendment of clause 3 of Section V, chapter 12, of the Revised Laws substantially by the addition thereto of the following words:

"But no real property, owned and occupied by any educational, literary or scientific institution, which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories, boarding houses, or for the dispensing of food or meals shall be exempt from taxation.'

Property on which Tax would fall which is now Exempt.

This bill if it becomes law would levy a tax on all dormitories occupied by either students, professors, or instructors; on all dining halls maintained by educational institutions; on all residences situated on the grounds of any educational institution and occupied by professors and instructors and not rented to them; and on all buildings used for students' cooperative stores or similar purposes, such as nearly every educational institution maintains.

The tax on buildings used for dormitories and boarding houses or halls would, of course, be the heaviest burden on most of our educational institutions. As regards our colleges, these dormitories and dining halls have been constructed in the majority of cases to aid the poorer students, and in all cases in order to enable these institutions to carry on their work to the best advantage. They have not been erected as investments, but (1) to provide necessary accommodations

for their students; (2) to provide such accommodations at low prices for the poorer students; (3) in many cases to keep the body of the students together for purposes of discipline and training. Moreover, having been erected, the money spent on them on the understanding that they would not be taxed, cannot now be productively invested elsewhere.

As regards the academies and schools, such dormitories and dining halls are essential. Young boys and girls of immature age who leave home to attend these institutions usually cannot board and room outside the institutions because they cannot in such case be kept in proper control, and because in many instances there is an actual lack of suitable accommodations.

Advantages to City or Town from being the site of a College or Educational Institution.

The advocates of this Bill state that it is unjust to the towns in which colleges or educational institutions are situated that the real estate of such institutions used for educational purposes should be exempt from taxation. These advocates especially represent the injustice to those cities or towns in which the larger colleges or academies having large amounts of exempt property are situated.

But the assessors' figures show that such cities and towns are as well if not better off than other cities and towns in the Commonwealth.

The figures on which the following calculations are based are taken from Public Document No. 19, entitled "Aggregates of Polls, Property, Taxes, etc., as assessed May 1st, 1905."

For example, the town of Amherst in which Amherst College is situated has a tax rate of $16.25 per $1,000. The average tax rate on property in Hampshire County in which Amherst is situated is $17.04 per $1,000. Amherst has 8.84% of the taxable individuals residing in the county, but it has 10.01% of the taxable property in the county. It seems clear that the presence of the college in Amherst has neither resulted in raising the tax rate above that of other towns in the county or in lowering the amount of taxable property below that of other towns in the county. On the contrary, Amherst is apparently enjoying an advantage in both respects.

Northampton, in the same county, the town in which Smith College

is situated, has a tax rate of $17.00 per $1,000, the average tax in the county being $17.04 per $1,000. Northampton has 30.53% of the taxable individuals residing in the county, and 35.46% of the taxable property in the county.

Williamstown in which Williams College is situated has a tax rate of $18.80 per $1,000. The average tax rate on property in Berkshire County in which Williamstown is situated is $18.03 per $1,000. But Williamstown has 4.17% of the taxable individuals residing in the county and 4.44% of the taxable property in the county.

Cambridge in which Harvard University is situated has a tax rate of $19.00 per $1,000. The average tax on property in Middlesex County in which Cambridge is situated is $18.34 per $1,000. But Cambridge has 15.17% of the taxable individuals residing in the county and 18.21% of the taxable property in the county.

Andover, which has three educational institutions,— Phillips Academy, Abbot Academy and the Andover Theological School, has a tax rate of $16.00 per $1,000. The average tax rate on property in Essex County in which Andover is situated is $16.80 per $1,000. Andover has 1.57% of the taxable individuals residing in the county and 1.92% of the taxable property in the county.

Not only do the assessors' figures show that such cities and towns are on the whole as well if not better off than other cities and towns in the same counties, but it may be shown affirmatively that an educational institution is as a matter of fact a great benefit to the city or town in which it is situated.

Take Harvard University as an example. As it is the largest educational institution in the state it would presumably work the greatest harm or benefit to the community in which it was situated. There are at present 5283 students in Harvard and Radcliffe. It may safely be assumed that each of these students spends $750 and that the University spends $150 above the amount received in tuition for each student, making a total expenditure of $900 per student; so that there is being expended during the present year in this way, $4,754,700. If the college grows during the next ten years at the rate it has increased during the past ten years, there will be in Cambridge in ten years, 7,660 students who will spend $6,894,000, an increase of over $2 000,000. By far the greater part of this money is spent directly in Cambridge in wages to employees, in food, in the rental of rooms and in purchases from the tradesmen of the city.

Harvard itself spent last year in salaries to professors and instructors and in wages to various employees, $805,121.66. Of this sum $168,797.64 was paid for services of janitors, watchmen, and caretakers in the dormitories. Practically all of this money went to persons resident in Cambridge, who in turn spent at least the larger part of it in the city of Cambridge, and who occupy houses rented and taxed in the city. There is in addition a large expenditure in Cambridge by persons who come to reside near the college, either to educate their children or because of the society which the college affords. These people are also taxed by the city. In addition there is much work on new college buildings which benefits the Cambridge citizens.

That the presence of the college has added to Cambridge an immense amount of taxable property is clear. Thus the valuation of 29 private dormitories and other buildings situated in Cambridge near the college yard, intended for students' use and owned by private persons, according to the assessors' books is $2,519,900, on which the city receives a tax of $47,878.10. These buildings are used exclusively by the students, and none of them would have been erected were it not for the presence of the college. In addition there are a large number of smaller dormitories and other buildings which are used exclusively by the students, the need and value of which is thereby created and maintained; and the college has also created a business centre in and around Harvard Square which has made property situated there extremely valuable.

Ward 8 in Cambridge, which includes practically all the exempted property of the college, includes about the same area as wards 5 and 7. The latter two wards include part of Central Square and part of the principal business district of the city and are nearer Boston. Yet the taxable value of the land in ward 8 excluding the exempted property belonging to the college according to the assessors' books is $6,099,100, while the taxable value of the lands in wards 5 and 7 is only $5,678,300. The total taxable value of both land, buildings, and personalty in ward 8 is $14,665,800, while the total in wards 5 and 7 is but $17,877,550.

It is safe to say that more than half the taxable value in ward 8 is due to the presence of the college and of business and industries for which it is directly responsible. If the college were not situated there, the business district would end shortly beyond Central Square, the

value of land in ward 8 would be about a quarter of what it now is, and beyond a few apartment houses, there would be no taxable buildings of any great value.

Moreover, ward 8 contains only 2,371 taxable polls out of a total in the city of 26,696, or 8.91 per cent. of the total, yet it contains taxable property to the amount of $14,665,800 out of a total in the city of $103,845,600 or 14.12 per cent.

In yet another way is Cambridge benefited. In the year 1904–1905, out of 4136 students in the college, in regular term time, 301 gave Cambridge as their home residence, and 48 more giving Cambridge as their home residence were entered in the Summer School; that is, 349 Cambridge young people were being educated at the university. Many of them would doubtless have been unable to leave home to attend a university because of the expense or for other reasons, and all who lived at home effected a saving of at least $250 each, which would mean a gain to the citizens in the case of 301 students attendant during regular term time alone of $75,250. Harvard is also spending annually for the benefit of each of its students at least $150. more than it receives from the student as a tuition fee. The college is thus spending for the benefit of these 301 Cambridge students alone, at least $45,150 more than it receives from them.

It is moreover not true, even apart from the fact that the college brings new business to a city or town and increases the value of other taxable land, that exempted land necessarily involves a real loss to the city or town in which it is situated. In all the towns in which colleges are situated there is other vacant land which could be used for business or residential purposes. If any person desires to start a business or to build a house in any of these towns or cities there is ample room. If Boston should convert the Public Garden into a business district it might make a profit out of selling the land, but it would not increase the total taxable property in the city, since buildings which are now being erected on Boylston Street and which make the land more valuable there and are taxable there would in such case be situated on the Public Garden. The total result to the city would not be an increase in taxable values. Indeed it would almost certainly be less, as the land now fronting on the Public Garden is far more valuable for that very reason. Where the exemption of property, as in the case of a college, results in bringing new business and the expenditure of an immense amount of money to the city or town, it

is clearly an advantage to the city or town in the mere matter of taxable values.

Moreover, a college practically maintains an open park at no expense to the city, and yet a park which benefits all the citizens. Its museums and many of its lectures are frequented by the public and it gives the town or city in which it is situated prominence and distinction.

The fact that a college is an advantage to a town or city is shown by the well known anxiety of towns or cities to have a college situated within their limits. The town of Amherst paid $50,000 to have the Massachusetts Agricultural College situated in the town, and the first building of Amherst College was erected in large measure by the free service and materials furnished by the inhabitants of the town and the surrounding towns.

This Tax would fall most heavily on Poor Boys.

A tax such as proposed would either result in an increase of the rents for dormitory rooms and of the price charged for board, or in less effective work by the institutions, and it would probably result in both. Any increase in the rent charged for dormitory rooms or in the price of board given at educational institutions would fall most heavily on the students which the state should especially protect. The sons of rich men could afford to pay more for their rooms or their board, but many of the poor boys could not. In most of our colleges the richer men live in private houses or dormitories which are not college property and are taxed, while the poorer boys live in the college dormitories, the rooms there being rented at lower rates, largely because they are not taxed. The same is true of the boarding places maintained by these institutions; for example,— at Harvard University two boarding places are maintained by the college; one at Memorial Hall, and the other at Randall Hall. At Memorial Hall during the years 1903 and 1904, 1776 men boarded. Of these the majority spent about $4 a week, as the following figures show:

31	spent	less than	$3.00	a week	total
139	"	between	3.00	and $3.50	
475	"	"	3.50	" 4.00	
538	"	"	4.00	" 4.50	
359	"	'	4.50	" 5.00	
142	"	"	5.00	" 5.50	
55	"	"	5.50	" 6.00	
37	"	over	6.00	a week on an average	

At Randall Hall the average price paid by students is substantially less than that paid at Memorial Hall. The auditor states that a large proportion of the students board there for $2.80 per week, and all the waiters are college students who cannot afford to pay even this amount, and serve as waiters in order to reduce still further the cost of their board.

Students in Massachusetts Colleges and Educational Institutions largely Poor Boys.

A large proportion of the students in Massachusetts colleges and other educational institutions are poor boys. This can be shown in many ways; for example:

At Harvard College during the past year 873 temporary positions were secured for students by the Appointments Office, being almost wholly for students needing opportunities to earn their college expenses. There is no record of the number of men who got employment in other ways, but it is safe to say that there are in that one college a thousand young men who are obliged to support themselves in whole or in part.

There are, further, in Harvard College proper the present year 264 students who are recipients of scholarships and aids from the college. They are all poor men, as no others are granted such aid, and these boys alone constitute 14 per cent. of the total college proper enrolment. In the years 1903 to 1904, a canvas was taken which showed that 11 per cent. of the students in Harvard College and the Lawrence Scientific School were sons of wage earners.

At the Massachusetts Institute of Technology 202 students at the present time are receiving scholarship assistance. Out of a total number of 1466 students at Technology during the present year, a canvas showed that the fathers of 19.6% are wage earners or farmers.

Benefit to the State from having Great Educational Institutions.

There can be no question but that the educational institutions of Massachusetts have added greatly to the prestige of the state, and have contributed materially to its financial resources.

Immense sums of money are each year spent by students in Massa-

chusetts who come from other parts of the country. Like the summer boarders in Maine, New Hampshire and Cape Cod, they constitute what might be termed a state industry. Students who flock to its colleges, schools and various educational institutions each year from other parts of the country must number at least 6,000. If each of these students spends $750 it means an expenditure in the state of $4,500,000 from this source alone.

In addition, large numbers of rich people come to this state from other parts of the country to educate their children, and thousands of others come to Massachusetts each year because of associations which they formed while students in its institutions, or because of the society which these institutions afford.

In addition, each year great gifts are made to these institutions from persons resident outside of Massachusetts. During the past five years not less than $5,650,000 has been brought into the state by the gifts of generous persons residing in other states to Harvard University alone. This money is either used in constructing college buildings here which gives employment to Massachusetts men, or largely invested in Massachusetts industries, or through business houses having their places of business in the state, and the income of the funds invested is entirely spent here.

In addition there are many professions practised in the State which the public welfare requires should be practised by men of the best possible professional training which only the best colleges can give. Any man taken to the City Hospital or the Massachusetts General Hospital for a critical operation wishes to have the highest professional skill exercised to save his life or relieve his suffering. From the funds of Harvard and Tufts many thousands of dollars are annually expended to create and maintain a high degree of medical and surgical efficiency.

It is further of immense importance to the State that it have the best educational institutions in the country. Massachusetts has held its position in the country from the earliest days, not from its natural resources, but chiefly from the number of highly trained men it has each year produced.

It is every year becoming more important that our boys should be trained in order to hold their own in competition with the trained men in other states and localities who are each year becoming more numerous and better trained. This is especially true of poor boys who have no capital to start business with. It is harder every year for the ambi-

tious poor boy to get a start in business if he has no special training, but easier for him to do so if he has such training. As an example of this, the following companies applied directly to the Secretary of Appointments at Harvard University during the past year for trained young men to enter their employ, and some of the larger of these companies have practically given standing orders to send them any men so trained as to fit them for their business.

New England Telephone & Telegraph Company, Boston.
American " " " " "
Bell " " " " of Philadelphia.
American Steel & Wire Company, Worcester, Mass.
General Electric Company, West Lynn, Mass.
Western " " New York.
Pope Motor Car Company, Indianapolis, Indiana.
Navy Yard, New York.
Crocker-Wheeler Company, Ampere, New Jersey.
Santa Fe Fuel Oil Department, Saratoga Field, Galveston, Tex.
Heine Safety Boiler Company, 11 Broadway, New York.
National Carbon Company, Cleveland, Ohio.
Boston Elevated Railway Company, Boston.
Allis-Chalmers Company, Milwaukee, Wisconsin.
Marshall Electric Company, Boston.
Landscape Architects.
The Gregg Company of New York.
Pa., N. Y. & L. I. R. R. Co., of New York.
Emporium Powder Mfg. Company, Emporium, Pa.
Solvay Process Company, Syracuse, N. Y.
Sullivan Machinery Company, Clarement, N. H.
Eastern Dynamite Works, Barksdale, Wisconsin.
Chesapeake & Potomac Telephone Co., Baltimore, Md.
United Printing Machinery Company, Boston.
De Lamar's Copper Refining Company, Chrome, N. J.
J. A. & W. Bird & Company, Boston.
Mallinckrodt Chemical Works, St. Louis.
American Diesel Engine Company, New York.
Diamond Rubber Company, Akron, Ohio.
Numerous Mine Superintendents.
L. & J. A. Steward, Rutland, Vermont (Tin cans & Can making machinery).
Stanley Electric Company.
Manchester Mills, Manchester, N. H.
L. A. Becker Company, Carbonating Machinery, Chicago.
Ostheimer Bros., Wireless Telegraphy, New York, Philadelphia and Berlin.

Edison Electric Company, Boston.
The M. B. Foster Electric Company, Boston.
Indianapolis Water Company.
Minnesota Hemp Company.

In addition to the above Companies, a large number applied directly to the various departments at Harvard for trained men.

These Companies apply to the institutions which they know give the best training, and if Massachusetts institutions are not the best, their students will lose these opportunities.

Rich boys could go to other states for their training if Massachusetts failed to have the best institutions. But the majority of poor boys could not. The travelling expenses in such case, the greater difficulty of getting work in a strange place, and the added cost of board, would make it impossible for many of them to go.

Moreover, Massachusetts has held since Colonial times a high reputation in the country as the leader in education, a reputation which has given it dignity and power, and which would be greatly to its disadvantage to lose.

It is becoming more difficult each year for Massachusetts to maintain its lead in educational matters. Previously there were few great institutions elsewhere, but during the last thirty years, not only have there grown up a number of great universities elsewhere, such as Columbia, Chicago, Cornell, and Leland Stanford, which have large private endowments, but the various states in the country have been generously granting large sums each year to their state institutions. Harvard is at present the largest university in the country, and Massachusetts owes considerable of its prestige in educational matters to this fact, but as the following table shows, at the rate of growth for the past ten years, Harvard in 1915 will be only the fifth college in size in the country and considerably smaller than a number of other universities. In this table the number of students at the institutions named are given for the years 1895–96, and 1905–06, and the estimated number for 1915–16, if the same proportionate rate of growth continues. The students at Radcliffe are included in the figures for Harvard.

		Number of Students. 1895–96
1.	Harvard	3,634
2.	Michigan State	3,000
3.	Pennsylvania	2,500
4.	Northwestern	2,413
5.	Yale	2,400
6.	Minnesota State	2,400
7.	California State	2,000
8.	Columbia	1,943
9.	Cornell	1,688
10.	Wisconsin State	1,534
11	Princeton	1,090
12.	Leland Stanford	990
13.	Illinois State	900

		Number of Students. 1905–06.
1.	Harvard	5,283
2.	Columbia	4,755
3.	Michigan State	4,500
4.	Minnesota State	4,000
5.	Illinois State	3,872
6.	Northwestern	3,843
7.	Cornell	3,841
8.	Pennsylvania	3,350
9.	Wisconsin State	3,342
10.	California State	3,294
11.	Yale	3,239
12.	Leland Stanford	1.605
13.	Princeton	1.357

		1915–16.
1.	Illinois State	16,649
2.	Columbia	11,649
3.	Cornell	8,719
4.	Wisconsin State	8,285
5.	Harvard	7,660
6.	Michigan State	6,750
7.	Minnesota State	6,680
8.	Northwestern	6,110
9.	California State	5,435
10.	Pennsylvania	4,489
11.	Yale	4,372
12.	Leland Stanford	2,600
13.	Princeton	1,696

The same thing is true of all our smaller colleges. Thus, Boston University, Massachusetts Institute of Technology, Amherst, Smith, Tufts, Wellesley, Williams, Worcester Polytechnic Institute and Mount Holyoke had 5,896 students altogether in 1894–95, and 8,275 students in 1905–06. This is a larger proportionate increase than that of Harvard, but a smaller increase than that of the leading colleges whose increase is given above, viz: Michigan, Northwestern, Minnesota State, California, California State, Columbia, Illinois State, Cornell, Wisconsin State, and Leland Stanford.

If Massachusetts is to maintain its educational lead, especially in competition with the State endowed colleges of the Middle West, its educational institutions will require every assistance that can be given. The funds of none of the colleges or academies in this state

are more than sufficient to meet their actual needs, and they are all asking gifts from persons all over the country in order to better their work and maintain their relative position. A tax of the nature proposed would not only be a direct and immediate burden to them, but it would almost certainly handicap our colleges by deterring many persons from making gifts to them. Any person living outside of Massachusetts interested in education and disposed to make large gifts for educational purposes almost always has arguments in favor of other colleges and localities urged upon him, and nothing could be more effectively used against our institutions than an apparent tendency on the part of Massachusetts to levy tribute on such gifts instead of following the more liberal policy of nearly all the states outside of New England.

Institutions on which Tax would fall.

The proposed tax would fall not only on the large colleges, but on a very large number of smaller educational institutions in the state. The following is a partial list of institutions in Massachusetts which would probably be affected by this proposed law, including both sectarian and non-sectarian colleges and schools:

Harvard College
Amherst College
Wellesley College
Phillips Academy
Episcopal Theological Sem.
Middlesex School
Williston Seminary
Milton Academy
Mt. Hermon School
Dummer Academy
Worcester Academy
St. John's Seminary
Notre Dame Academy
Philosophy House
St. Patrick's Academy
St. Dominic's Academy
Chicopee Academy
Academy of our Lady
Williams College
Tufts College
Smith College
Andover Theological Seminary
Abbott Academy
Dean Academy
Groton School
Tabor Academy
St. Mark's School.
Weslyan Academy
St. Catherine's Academy
St. Joseph's Academy
St. John's Normal School
St. Anne's Academy
Academy of the Assumption
Apostolic School
Sisters' Academy

Educational Institutions have built Dormitories and Boarding Houses on the implied understanding that they would not be Taxed.

This state has so long exempted dormitories and dining halls, owned by educational institutions from taxation, that this policy has made our educational institutions feel that it was safe to accept gifts of such buildings without fear of taxation. It would be a grave question if Harvard had known that its Memorial Hall was to be taxed whether or not it could have accepted the gift. It would have meant devoting the income of several hundred thousand dollars of its productive funds to the payment of this tax. The same is true of Randall Hall, another large dining hall maintained by the University. Also many of the dormitories would not have been built had it been thought that they would be taxed. The expenditure on these dormitories would give a very meagre return to the college, if taxed, and the college undoubtedly would have felt itself obliged to use its funds in other ways, even at the expense of its poor students. The colleges and other educational institutions of Massachusetts have accepted gifts in such form and their benefactors have given them gifts in such form feeling that they would be exempted from taxation. It would be a great injustice to apply this tax to such buildings, the result of gifts given in the past in full confidence that it was the settled policy of the state to exempt such property from taxation.

The Established Massachusetts Policy.

The property which it is proposed to tax under this Bill has always been exempt from taxation in Massachusetts. Prior to the Revised Statutes of Massachusetts passed in 1836, it was customary for the legislature each year to provide that such property should be exempt, and prior to 1828, not only was such property exempt, but the president, professors, librarians and students of Harvard, Williams and Amherst Colleges, and of all other theological, medical, and literary institutions, ministers of the gospel, preceptors of academies, Latin and grammar school masters were exempted from poll taxes and all other taxes on this property to a limited amount.

By the Revised Statutes passed in 1836 the following general rule was adopted:

That there should be exempted from taxation

"Secondly, the personal property of all literary, benevolent, charitable and, scientific institutions, incorporated within this Commonwealth, and such real estate belonging to such institutions as shall be actually occupied by them or by the officers of such institutions, for the purposes for which they were incorporated."

This general exemption has remained practically unchanged to the present day.

Not only has the property proposed to be taxed by the present Bill been heretofore exempted, but the legislature has until the last thirty or forty years made specific grants to the higher institutions of learning in the state. In the course of the Colonial and Provincial periods the legislature of Massachusetts made no less than 103 distinct grants to Harvard College and these grants were continued from time to time until 1874. The largest grant of the legislature was made by the act of 1814, which provided that $\frac{10}{16}$ of the bank tax amounting to $10,000 should be paid annually to the college for a term of ten years, yielding in all the sum of $100,000. The state has also contributed to Amherst and Williams Colleges from time to time.

What is done in Other States.

In practically no other state in the country, except California, are such buildings taxed as it is here proposed to tax, and in California the state annually grants large sums of money to its State institutions of higher learning. Moreover, in nearly every state in the country large grants are annually made to colleges and institutions of higher learning. The following table taken from the report of the Commissioner of Education of the Interior Department for the year 1902 shows the income from state or municipal appropriations for the years 1901–1902 of the following institutions, the appropriations being almost entirely from the States.

Alabama.	
University of Alabama	$10,000
Arizona.	
University of Arizona	20,877
Arkansas.	
University of Arkansas	53,600

California.

University of California	346,754

Colorado.

University of Colorado	80,000

Delaware.

Delaware College	12,500

Florida.

Florida State College	5,000

Idaho.

University of Idaho	11,000

Illinois.

University of Illinois	524,561

Indiana.

Indiana University	100,000

Iowa.

State University of Iowa	188,775

Kansas.

University of Kansas	220,000

Louisiana.

Louisiana State University	21,000

Maine.

University of Maine	15,000

Maryland.

Johns Hopkins University	24,000

Michigan.

University of Michigan	403,525

Minnesota.

University of Minnesota	406,181

Mississippi.

University of Mississippi	3,500

Missouri.

University of the State of Missouri	180,221

Montana

University of Montana	35,765

Nebraska.

University of Nebraska	119,750

Nevada.

Nevada State University	28,340

New Hampshire

Dartmouth College	15,000

New Mexico.

University of New Mexico	13,000

New York.

College of the City of New York	259,681

North Carolina.

University of North Carolina	37,500

North Dakota.	
University of North Dakota	50,000
Ohio.	
Ohio State University	258,382
Ohio University	32,586
University of Cincinnati	66,182
Miami University	23,732
Wilberforce University	30,000
Oklahoma.	
University of Oklahoma	120,000
Oregon.	
University of Oregon	47,760
Pennsylvania.	
Pennsylvania State College	43,979
South Carolina.	
South Carolina College	30,000
South Dakota.	
University of South Dakota	40,000
Tennessee.	
University of Nashville	20,000
Texas.	
University of Texas	165,000
Utah.	
University of Utah	66,436
Vermont.	
University of Vermont	6,000
Middlebury College	2,400
Norwich University	7,200
Virginia.	
University of Virginia	60,000
College of William & Mary	15,000
Washington.	
University of Washington	75,000
West Virginia.	
West Virginia University	156,550
Wisconsin.	
University of Wisconsin	289,000
Wyoming.	
University of Wyoming	23,855

Statistics 1900–1901.

According to this table, in eight states the income received from such appropriations was over $200,000 as follows

California	346,754
Illinois	524,561
Kansas	220,000

Michigan	403,525
Minnesota	406,181
New York	259,681
Ohio	410,882
Wisconsin	289,000

The Commonwealth of Massachusetts is not called upon to make such appropriations to its institutions of higher education, but instead relies upon the generosity of private individuals many of whom reside without the borders of the State. Had they not received such gifts the state would be obliged, in order to maintain its position, to grant its higher institutions annual aid. This generosity of private individuals therefore has been a great saving to the state. The State should not be less liberal than the other states of the Union and discourage their gifts by a tax on these institutions.

1907.

THE EXEMPTION FROM TAXATION OF THE REAL ESTATE OF COLLEGES AND OTHER CHARITIES.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

vs.

ASSESSORS OF CAMBRIDGE

On February 24, 1897, *the Full Bench of the Supreme Judicial Court of Massachusetts rendered its decision in the case of Williams College v. Assessors of Williamstown, which is reported in Vol. 167 Mass. Reports, page 595, wherein the Court held that certain lots of land, with the dwelling-houses thereon, owned by Williams College and occupied by its professors and other officers, were not exempted from taxation under the laws of this Commonwealth.*

It was because of this decision that the City of Cambridge assessed a tax for the year 1897 upon certain houses and lots belonging to Harvard College and occupied by its president, professors, and students, which had never been taxed before, but had always been treated by the College and the City of Cambridge as exempt from taxation under the laws of this Commonwealth.

The College paid the taxes on this property under protest, and made application to the assessors for abatement thereof, and, upon their refusal to abate, appealed to the Superior Court. The case was submitted to Mr. Justice Bell of the Superior Court upon an agreed statement of facts which is set forth in his report. Judge Bell decided that the several properties were exempt from taxation, and by consent of the parties reported the case to the Supreme Judicial Court for its decision. The Judge's report is as follows:—

REPORT

This action is a petition for abatement of certain taxes assessed upon certain properties of the petitioners as hereinafter appears.

The petition may be referred to.

It is not claimed in this case that the taxes are excessive, but the petitioners claimed that the properties are exempt from taxation under the provisions of clause three, section five, chapter eleven of the Public Statutes, as amended by Statutes of eighteen hundred and eighty-nine, chapter four hundred and sixty-five.

The case was heard before me without a jury upon the following agreed statement of facts, and no other evidence was submitted: —

Agreed Facts

The following are agreed to be the facts in this case: —

The appellants are a corporation established under the laws of this Commonwealth, and a literary, benevolent, charitable, and scientific institution within the meaning of the provisions of Public Statutes, chapter 11, section 5, clause 3, as amended by chapter 465 of the Acts of 1889.

On the first day of May, 1897, the appellants were the owners of certain property situated in said Cambridge, and were liable to taxation therefor; they filed with the assessors of said Cambridge within the time specified by them a full and accurate list in due form of all their estate which they considered liable to taxation in Cambridge; they were also on said first day of May, 1897, the owners of certain other property, viz.: real estate, situated in Cambridge, which they contend is exempted from taxation under the provisions of Public Statutes, chapter 11, section 5, clause 3, as amended by chapter 465 of the Acts of 1889, because said property, they contend, is occupied by the appellants or their officers for the purposes for which they were incorporated; that the appellants also filed with said assessors within the required time a true list of all real and personal estate held by them for literary, benevolent, charitable, and scientific purposes, together with a statement of the amount of all receipts and expenditures for said purposes during the year next preceding said first day of May. The real estate, which the appellants now contend is exempted from taxation as aforesaid, is briefly described as follows: —

No. 17 Quincy Street,
No. 17 Kirkland Street,
No. 11 Quincy Street,
No. 16 Quincy Street,
No. 25 Quincy Street,
No. 37 Quincy Street,
No. 38 Quincy Street,
No. 11 Frisbie Place.

The assessors of Cambridge assessed a tax for the year 1897 upon this real estate amounting to $2817.50, and a tax bill demanding payment of the same, and dated September 1, 1897, was received by the appellants, who paid said tax under written protest on October 7, 1897. Within six months after the date of said tax bill the appellants applied to the assessors for an abatement of said tax.

On January 21, 1898, the assessors in writing notified the appellants that they refused to abate said tax or any part of it.

On February 12, 1898, the appellants gave notice that they appealed from said decision, and on March 7, 1898, which was the first return day occurring after thirty days from the date of the assessors' said notice, the appellants entered their appeal in this court.

The several houses and lots of land in question in this case, with the specific assessments on each in the year 1897, and the mode of its occupation, are as follows: —

1. 17 Quincy Street,
32,000 feet of land assessed at $19,000
House assessed at 16,000

$35,000 Tax, $612.50

The land upon which stands house No. 17 Quincy Street, as well as houses Nos. 11, 25, 37, on said street, hereinafter to be mentioned, was conveyed to the President and Fellows of Harvard College in 1835.

This land was not a part of the original college yard, but was made a part thereof after the purchase aforesaid by removing the fences and monuments which had hitherto separated the same, thus making the said land and the college yard one large field upon which stood these several houses without any dividing fences between the same.

The house No. 17 Quincy Street was built in 1860–61, from the gift of $10,000 and accumulated income made April 14, 1846, by Peter C. Brooks, who said in his letter of gift, "It is my wish that this sum

should be expended in aid of the erection of a dwelling-house for the president of the university and his successors whenever it may be the desire of the present president that a new house should be built."

All additions and repairs upon this house were paid for from this gift and accumulations until it was all spent, and since then such repairs and additions have been paid for by the college.

The premises are kept in order and repair, including grading, graveling walks, fertilizing, and repairing and cleaning the furnace, removal of ashes, etc., under the direction of the college superintendent of buildings and the superintendent of grounds, at the college expense, and for the most part by the college employees. Outside repairs are made by the superintendents as may seem best to them wthout waiting for the request of the occupant; inside repairs are made by them upon the occupant's request.

The house is occupied by the president of the university and his family. He receives as such president a salary and pays no rent or compensation for the use and occupation of this house. He has no lease of said house, but occupies it if he so chooses so long as he performs the duties of the office of president. Partly for his own convenience and partly for the convenience of the college, the drawing-room and hall are used for meetings of the faculty and committees, for conferences with university officers and students, for calls on university business, and the meeting of the corporation at which degrees are voted annually, and all the lower floor, except possibly the kitchen, is used for Class Day, Commencement, and other receptions, and for many hospitalities incident to the president's functions.

The rest of the house is used by the president and his family as a dwelling-house, consists of the usual living and housekeeping rooms and chambers, and no other use than as hereinbefore stated is made of it.

The president is required by statute of the university to live in Cambridge.

Since the house was built the presidents have lived in it in manner aforesaid, but neither the house or the land upon which it stands was ever assessed or taxed to the college until the year 1897, nor were the other houses and lands hereinafter mentioned assessed or taxed to the college prior to the year 1897.

2. No. 17 Kirkland Street,
Assessed 1897, 30,475 feet of land at $18,000
House at 6,000

$24,000 Tax, $420

The correct area of this land is 28,953 square feet. The estate was conveyed to the President and Fellows of Harvard College on May 25, 1889. The main part of the building is used above the lower story as a college dormitory, and it is in charge of a resident proctor. The college at its own expense, by its superintendents, janitor and employees, attends to the whole of the repairs, the daily care, cleaning, making beds, removing ashes, etc., of this part of the building; the students hire these rooms of the college and are charged in their term bills stated sums therefor, which amounted in the year 1897 to the gross sum of $975.

The college also attends to all the outside repairs upon the whole building, the cutting of grass, trimming of trees, raking and removal of leaves and rubbish, graveling of walks, grading, etc., of the whole lot. Over the ell in the rear the three rooms are used for the sleeping rooms of the servants employed in the building.

The lower story of the building is assigned as a refectory for the Foxcroft Club, an association of students of the university organized for the purpose of obtaining wholesome food at cost. The college receives no rent or compensation in any form for the use of this estate by the Foxcroft Club. The college pays the bills of the club on the approval of the officers of the club, charging interest on money so advanced to the date of repayment, and collects on regular college term bills these charges against the students for their board. The daily care of and repairs upon the part of the building used by the club are attended to by the club at its expense, except that glazing and outside repairs are attended to by the college at the college expense.

The club has had no lease or fixed term of use; it has hitherto used the premises without charge.

3. No. 11 Quincy Street,
Assessed 1897, 18,000 feet of land at $14,000
House at 5,000

$19,000 Tax, $332.50

Since 1893 this house has been occupied by Professor George H.

Palmer and his wife. Professor Palmer is Alford Professor of Natural Religion, Moral Philosophy, and Civil Polity. Partly for his convenience and partly for the convenience of the college, the drawing-room and hall in said house are used for regular college exercises during the college year, and also for interviews with college students and instructors upon business of the university. The rest of the house is used by the professor and his family and consists of the usual living and housekeeping rooms and chambers.

The premises are cared for at the expense of the college in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When in the fall of the year the salary of Professor Palmer for the current college year is voted, it is fixed as a certain sum "and the use of house $750," otherwise Professor Palmer pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor.

4. No. 16 Quincy Street,
Assessed 1897, 11,600 feet of land at $6,600
House at 5,400

$12,000 Tax, $210

This estate contains 10,940 square feet of land and was conveyed to the President and Fellows of Harvard College as a gift by Henry C. Warren, April 19, 1892.

Since 1892 this house has been occupied by Assistant Professor F. C. de Sumichrast and family. This professor is the head of the department of French and Chairman of the Freshman Advisers Committee of the Faculty of Arts and Sciences. This is a large committee of about twenty persons, each of whom has charge of a section of the Freshman Class. As such chairman, partly for his own convenience and partly for the convenience of the committee, the professor has a great number of interviews at this house with students and parents in his drawing-room, and this room and the hall adjoining is also thus used for meetings of the committee and for other college purposes incident to his several duties. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers.

The premises are cared for and kept in repair at the expense of the

college in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When in the fall of the year his salary is voted, it is fixed at a certain sum "and the use of house $500," otherwise the professor pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor.

5. No. 25 Quincy Street,
Assessed 1897, 28,000 feet of land at $16,000
House at 8,000

$24,000 Tax, $420

This house was occupied in 1897 and prior thereto by Professor N. S. Shaler and family. Professor Shaler is Professor of Geology, Dean of the Lawrence Scientific School, Chairman of Committees of the Faculty of Arts and Sciences on Reception of Students, Summer Courses, Admission to the Scientific School from other scientific schools, Advisers of Scientific Students, and Four Year Courses in Scientific School, and Chairman of the Board of Examination Proctors.

In 1892 the college at its own expense made additions and improvements on the first floor of the house, which made it more convenient for the transaction of college business and the entertaining of guests on college account. The drawing-room and hall and additions are used for different college purposes incident to the several duties of Mr. Shaler. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers. The premises are cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street. When in the fall of each year the salary of Professor Shaler is voted, it is fixed at a certain sum "and the use of house $1000," otherwise Professor Shaler pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor and dean.

6. No. 37 Quincy Street,
Assessed 1897, 18,000 feet of land at $11,000
House at 6,000

$17,000 Tax, $297.50

This house was built by the college in 1849, and in 1897 and prior

thereto was occupied by C. C. Langdell, Dane Professor of Law, and his family. It is cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street. When his salary is voted in the fall of the year, it is fixed at a certain sum "and the use of house $700," otherwise Professor Langdell pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor.

7. No. 38 Quincy Street,
Assessed 1897, 10,000 feet of land at $6,000
House at 6,000

$12,000 Tax, $210

These premises contain 21,149 square feet of land. This estate has not been assessed or taxed from the time of its acquisition by the college until the year 1897, except that about one half of the land in the whole lot is reported for taxation by and taxed to the college as unused land, and the other half is now taxed as above by the assessors.

This estate was conveyed to the President and Fellows of Harvard College as a gift from Henry C. Warren, January 28, 1892, with the request of the donor that no brick or stone building be erected on the premises during his life without his consent in writing, or after his death without the similar consent of any person named by him, if then living in the same house as at the time of the gift.

This house in 1897 was occupied by Professor John H. Wright, Professor of Greek and Dean of the Graduate School, and his family. The drawing-room and hall therein are used for different college purposes incident to his duties, partly for his own convenience and partly for the convenience of the college. The rest of the house is used by him and his family, and consists of the usual living and housekeeping rooms and chambers. The premises are cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When his salary is voted in the fall of each year it is fixed at a certain sum "and the use of house $900," otherwise Professor Wright pays no rent and has no other agreement for his use and occupation of said house, but uses it as such professor and dean.

8. No. 11 Frisbie Place,
Assessed 1897, 20,000 feet of land at $8,000
House at 10,000

$18,000 Tax, $315

This is a part of the land conveyed to the college by Charles and Charlotte Saunders by deed dated September 1, 1863.

This house in 1897 was occupied by James Barr Ames, Bussey Professor of Law and Dean of the Law School, and his family. The drawing-room therein and hall adjoining are used for different college uses and purposes incident to his duties, partly for his own convenience and partly for the convenience of the college. The rest of the house is used by the professor and his family, and consists of the usual living and housekeeping rooms and chambers. The premises are cared for and kept in repair at the expense of the college, in the same manner and to the same extent as is above described in relation to No. 17 Quincy Street.

When his salary is voted in the fall of the year, it is fixed at a certain sum "and the use of house $700," otherwise Professor Ames pays no rent and has no other agreement for his occupation and use of said house, but uses it as such professor and dean.

The several deans herein mentioned are charged each with a portion of the administrative duties which formerly devolved exclusively on the president.

Upon the facts as above agreed I ruled that I was authorized to find, and did therefore find, that the several properties therein referred to are exempt from taxation and found for the petitioners in the sum of twenty-nine hundred twenty-two and fifty hundredths (2922.50) dollars principal, and interest thereon from October 7, 1897, to wit: the sum of two hundred sixty-seven and ninety hundredths (267.90) dollars, in all thirty-one hundred ninety and forty hundredths (3190.40) dollars.

The respondents being aggrieved by said decision duly excepted thereto, and by consent of the parties the case is reported to the Supreme Judicial Court for its decision.

If the court shall determine that either of the said properties is exempt from taxation, judgment shall be entered thereupon for the petitioners for the tax assessed upon such property and interest from October 7, 1897; otherwise judgment shall be entered for the respond-

ent upon such of said properties as are so determined not to be exempt from taxation.

CHARLES U. BELL, J. S. C.

On November 16, 1899, *the case was argued before the Full Bench of the Supreme Judicial Court, which consisted of Chief Justice Holmes and Justices Barker, Morton, Lathrop, Hammond, and Loring. Mr. Samuel Hoar, on behalf of Harvard College, and Mr. Gilbert A. A. Pevey, on behalf of the Assessors of Cambridge, argued the case upon the following printed briefs*: —

BRIEF FOR HARVARD COLLEGE

Early History of the College.

Harvard College was founded in 1636 by a vote of the General Court of the Colony of Massachusetts Bay, which convened on September 8 of that year. The language of the order was as follows: —

> The Court agree to give Four Hundred Pounds towards a school or college, whereof Two Hundred Pounds shall be paid the next year and Two Hundred Pounds when the work is finished, and the next Court to appoint where and what building.

In 1637 the General Court appointed twelve of the most eminent men of the Colony "to take order for a college at Newtown."

In 1638 the name Newtown was changed by the General Court to Cambridge, in recognition of the English university, where many of the Colonists had been educated. In the same year, after the gift of John Harvard, the college was given the name of Harvard.

In 1642 the general government of the college and the management of its funds were placed in the hands of a Board of Overseers by act of the General Court.

In 1650 a charter was granted to the college by which the college was made a corporation consisting of a President, five Fellows, and a Treasurer, to be called by the name of the President and Fellows of Harvard College.

The term "university" was first applied to Harvard College in 1780,

in the Constitution of the Commonwealth of Massachusetts, which ratified and confirmed to the president and fellows all their vested powers, rights, and immunities.

The general purpose of the formation of the college is declared to be for the "advancement and education of youth in all manner of good literature, arts, and sciences" (Charter, May 31, 1650). Nowhere in the statutes are the terms "college" or "university" defined, but the president and fellows are given power to make such "orders and by-laws for the better ordering and carrying on the work of the college as they shall think fit" (Charter).

The term "college," however, had a very definite meaning in the minds of the early Colonists, as many of the leading men among them had been educated in English colleges. And inasmuch as the General Court changed the name of the college town from Newtown to Cambridge, in recognition of one of the great English universities, we must believe that its members had in mind the great universities of England as models for the new college in New England. An examination into the constitution and scope of the English universities, and the colleges of which they are aggregations, ought to help us to understand what, in the minds of the founders of Harvard University, could properly be done "in carrying on the work of the college," or in the language of the statute under consideration, in carrying out "the purposes for which they were incorporated."

The colleges, it must be distinctly kept in mind, were primarily convictoria, or boarding-houses.

Vol. I., V. A. Huber, English Universities, p. 178.

Hammersley, J., says in the case of Yale University *v.* New Haven:—

As first used, "college" indicated a place of residence for students, and occasionally a "*universitas*," or "*studium generale*."....A suggestion of the modern university appears in the College and Library of Alexandria founded and endowed by Ptolemy Soter. Here the Museum provided from the first lodgings and refectory for the professors, and later similar provisions were made for the students....At first little more than lodging rooms and refectory, they [colleges] grew, especially in England, to be the home of students for all purposes. The instruction and discipline of the university were through the colleges....With changes in conditions, the college was largely eliminated from the Continental universities, while in England the university became practically the associated colleges. Merton College, Oxford, founded in 1264,

was the prototype of the English college. That college consisted of the chapel, refectory, and dormitories....As Newman says, the university, to enforce discipline, developed itself into colleges, and so the term "college" was taken to mean a place of residence for the university student, who would there find himself under the guidance and instruction of superiors and tutors bound to attend to his personal interest, moral and intellectual. See *passim* 3 Newman, Hist. Sketches; Lyte's History of University of Oxford; 1 & 2 Huber, English Universities; Enc. Brit. "Universities."....And so at the beginning of the seventeenth century the students of an English university lived in colleges, were instructed and governed through colleges, whether the university included a number of colleges or a single college, and among the buildings indispensable for every college were the great hall or dining-room, and the living rooms or dormitories.

Yale University *v.* New Haven, 71 Conn. 316.

See also History of University of Oxford, G. C. Broderick, Ch. II., 18–20.

From Atkinson and Clark's "History of the University of Cambridge" (p. 243) it appears that the colleges originally were lodging-houses for the master and fellows, and that the students came in afterwards.

At Oxford by Statute of 1432 all members of the university were required to be inmates of some college or hall, except those who should be especially licensed by the Chancellor to live in lay houses.

Broderick, Hist. of Un. of Oxford, pp. 61, 62.

Thus at the time that Harvard College was founded the English colleges were communities of fellows and scholars, each housing and feeding its own members, including the master or head or president, and each with the necessary officers, servants, buildings, and equipment for attending to the physical wants of its inmates; and in the buildings of which an English college usually consisted we find the president's chamber, the fellows' rooms, scholars' rooms, warden's lodgings, the treasury, the library, the chapel, the hall or commons, buttery, kitchen, brewery, storehouse, offices, and stables.

C. Grant Robertson, University of Oxford, All Souls, chap. I.
Stokes' University of Cambridge, Corpus Christi, chap. II.
Gray's Queen's College, chap. II. and VII.
Broderick's Hist. of University of Oxford, chap. II.

And in like manner Harvard College, from its foundation, was a community of teachers and students living in the college, housed

and fed by the college. In College Book Number Three of the Records of Harvard College, the first step taken to build the College in accordance with the vote of the General Court of the Colony of Massachusetts Bay, in 1636, is recorded in the following language: —

> Mr. Nathaniel Eaton was chosen Professor of said School in the year one thousand six hundred and thirty-seven, to whom the care and management of the donations before mentioned were intrusted, for the erecting of such edifices as were meet and necessary for a college, and *for his own lodgings.*

1 Quincy's Hist. Harv. Un., 452.
Early College Buildings by A. McF. Davis, p. 3.

The first college building was begun by Eaton, and was completed by Samuel Shepard, who took charge in 1639. It consisted of a cellar, a hall which was used as a dining-room and for recitations and religious exercises, a library, a kitchen, a buttery, a larder or pantry, and eight chambers for fellows or tutors and students, two of them small, and intended for a single occupant each, the others intended for three or four occupants each, and each containing three or four studies, besides five studies in the "turret."

Davis' Early College Buildings, 16 and 17.
Davis' College in Early Days.

The second college building was the president's house. This was erected by the college under the supervision of Henry Dunster, the first president of the college, who was appointed in 1640. The General Court early recognized the public character of the president's house by a grant in the following language (the money, however, was never paid): —

> The 13th of the 9th mo. A. 1644. It was ordered that Mr. Dunster, President of the College at Cambridge, shall have £150 assigned to him (to be gathered by the Treasurer for the College) out of the money due for the children sent out of England to be expended for a house of be built for the said President, in part of the £400 promised unto him for his use, to belong to the College.

Quincy's Hist. Harv. Un., Vol. I., appendix No. VII., p. 473.

This house was occupied by the president and his family. In it were also the printing press and a student's room. Students' rooms were also provided in the Goffe house, which was purchased by the college, and the Indian College built for the "convenience of six hope-

ful Indian youths to be trained up there," but occupied generally by some twenty white students.

In College Book No. 1 we find the duties of the steward, the cook, the butler, and the servitors or waiters set forth with the greatest minuteness; there is also mention of the brewer and the baker.

Col. Book No. 1, p. 23.

There are detailed regulations for the orderly conduct of students in their relations with the outside world and with the college, their behavior and supervision in their chambers, in the hall, and at meals.

Col. Book. No. 1, pp. 17 and 23, 157.

It has always been the law that "the president shall constantly reside in Cambridge."

Col. Book No. 1, p. 157.
Report, p. 4.

President Dunster was the first occupant of the president's house, and when he was forced to resign in 1654, having fallen "into the briers of Antipaedobaptism," he had to address a pathetic appeal to the General Court to save himself and family from being at once ejected from the house.

Quincy's Hist. of Harv. Un., Vol. I., pp. 18 and 19.

In the year 1700, after Increase Mather had finally consented as president of the college to live in Cambridge, a committee of the General Court was appointed "to take care that a suitable place was provided at Cambridge for the reception and entertainment of the President, and to consider what ought to be done with respect to a house already built for a President's house."

Quincy's Hist. of Harv. Un., Vol. I., pp. 109 and 110.

The use of this house was understood to be part of the president's compensation, and President Leverett petitioned for compensation for the "demolition in part" of the house, and after his death his daughters and heirs petitioned for compensation because their father had been deprived of the use of the president's house after it was pulled down, about 1720, to make room for Massachusetts Hall.

On June 18, 1725, a committee of the General Court was appointed "to look out a suitable house for the reception of the president and know what the same may be had for," and on June 23, the same month, the same committee was "further empowered to hire such a house for the space of six months next coming, or until they make report to this Court in their fall session."

Resolves of 1725.

And on Jan. 1, 1726, the General Court passed the following resolve for the purpose of providing a home for President Wadsworth, which house has ever since been known as the Wadsworth House: —

And whereas there is not at present any convenient house provided for the reception and entertainment of the president of the said college for ye future, and the Court being willing and desirous to repeat their intentions and inclinations in all things for ye prosperity of that society and that the same may flourish under the Divine Influence,

It is resolved that the sum of one thousand pounds be allowed and paid out of the public treasury to the corporation of Harvard College and by them to be forthwith used and disposed of for the building & finishing a handsome wooden dwelling house, barn, out housing &c. on some part of ye land adjacent and belonging to the said college. Which is for the reception and accomodation of the Rev. the president of Harvard College for the time being.

A statute of the General Court of the Province which authorized a lottery for the purpose of raising the sum of £3000 for building a new hall for lodging-rooms for students, has the following preamble: —

Whereas the buildings belonging to Harvard College are greatly insufficient for lodging the students of the said college, and will become much more so when Stoughton Hall shall be pulled down, as by its present ruinous state it appears it soon must be; and whereas there is no fund for erecting such buildings, and considering the great expence which the general court has lately been at in building Hollis Hall, and also in rebuilding Harvard College, it cannot be expected that any further provision for the college should be made out of the public treasury, so that no other resort is left but to private benefactions, which it is conceived, will be best excited by means of a lottery, therefore, to prevent the further inconveniences which will arise from the necessary pulling down of Stoughton Hall and to provide for the present want of lodging rooms in the said college, ...

Province Laws 1765–66, chap. 21.

This method of helping the college to provide buildings for its stu-

dents, which was begun under the authority of the Province of Massachusetts Bay, was resorted to also under the authority of the State Legislature.

Laws and Resolves, 1795, chap. 1.
Laws and Resolves, 1805, chap. 5.

In the early history of the college, the students and the professors, fellows, or tutors were obliged to live in the college unless specially excused. At a meeting of the Overseers, Anno 1660, it was ordered: —

That no student shall live or board in the family or private house of any Inhabitant in Cambridge without leave from the President and his Tutor, and if any upon such leave obtained shall so live, yet they shall attend all College Exercises, religious and Scholasticall & be under Colledge Order & Discipline as others ought to do & be that are resident in the Colledge & shall pay allso five shillings a Quarter towards Colledge Detriment, beside their Tutorage.

Col. Book No. 2, p. 23.

Anno 1666. It is ordered by the Overseers that such as are fellows of the Colledge, & have sallaryes payd them out of the Treasury shall have their constant Residence in the Colledge, and shall lodge therein & be present with the Schollars at meal times in the Hall, have their studyes in the Colledge that so they may be better enabled to inspect the manners of the Schollars & prevent all unnecessary Dammage to the Society.

College Book No. 3, p. 25.
Quincy's Hist. of Harv. Un., Appen. No. 4, pp. 540, 549.

In the College Laws of 1734, chap. 5, par. 1, it is provided as follows: —

All the Tutors, & Professors, Graduates & Undergraduates, who have studies in College, shall constantly be in commons, while actually residing at College, vacation time excepted: and shall Dine and Sup in the Hall, at ye stated meal times, except waiters (and such whose Parents or Guardians live so nigh that they may conveniently board with them) and such others as the President and Tutors shall in cases of necessity exempt, Provided always that no Professor or Tutor shall be exempted but by leave of the Corporation with the consent of the Overseers. And the Tables shall be covered with clean linen cloaths, of a suitable length and breadth twice a week, and furnished with Pewter Plates, the plates to be procured at ye charge of the College, and afterwards to be maintained at the charge of the Scholars, both Graduates and Undergraduates, in such manner as the Corporation shall Direct.

College Book No. 1, pp. 168, 169.

Laws of 1790, Chap. VIII., par. 2: The professors shall constantly reside at Cambridge, near the College, and the Tutors and Librarian in the College. And the Corporation shall assign to the Tutors, and such Professors as reside in the College, their respective chambers.

The laws and practices of the University have been substantially the same to the present time, housing as many of its students as it can find chambers for, feeding them in one or more halls or dining-rooms, and requiring them to live as much as possible under the supervision of tutors and professors, who, as far as practicable, are required to live in college buildings or so near the college that they can exert a guiding and restraining influence over the students.

Laws of 1798, Chap. VIII., par. 2, and subsequent years.

ARGUMENT

I

Exempting Statutes

From the foregoing historical references, it is very evident that from the beginning the Corporation and the Overseers of Harvard College have considered the College to be essentially a community of teachers and students, housed and fed in the college, living in college buildings, subject to the disciplinary rules of the College where the restraining and guiding influences of the president and teachers could be brought directly to bear upon the students. It is equally clear that in accordance with this idea, they considered it absolutely necessary for the accomplishment of the purposes for which the college was incorporated that it should have buildings suitable for housing and feeding its president and teachers and students.

The historical evidence is quite as strong that the General Courts of the Colony of Massachusetts Bay, of the Province of Massachusetts Bay, and of the Commonwealth of Massachusetts held the same view of the College, and of the means necessary for the accomplishment of its purposes, for we have seen that the Colony, the Province, and the Commonwealth at times when their resources were very limited, provided, or helped to provide, buildings to be used as the dwelling places or homes of the president, teachers, and students of the College.

It would certainly be a very strange and illogical policy for the Colony, the Province, or the Commonwealth to put a tax upon buildings, which they considered so essential to the College that they strained their own resources to help build and maintain them, or to tax buildings which are used for the same purposes as those which they so helped to construct and maintain. But an examination of the laws by which Harvard College has been exempted from taxation will show that such an unreasonable and illogical policy was never put in force by either of the sovereign powers under which the College has existed.

Under its charter, which it received from the Colony, the College was authorized to hold real estate not exceeding the value of five hundred pounds per annum and any amount of personal property; its real estate, not exceeding the value of five hundred pounds per annum, and all its personal property were exempted from taxation; in other words, under its charter all its property was exempted.

Stat. of May 31, 1650.

This exemption granted by the Colony in the charter has ever since been respected by the Province and the Commonwealth; it is in force to-day and applies to all the property which the College had when it received its charter.

Hardy *v.* Waltham, 7 Pick. 108.
Harvard College *v.* Aldermen of Boston, 104 Mass. 470.

The Province, however, did more than observe the exemption of the charter of the College; it expressly exempted *all* its property, and in all the numerous acts passed by the General Court of the Province of Massachusetts Bay for apportioning and assessing taxes, we find provisions substantially in the same form, exempting from assessment both the property of the College and, with some qualifications, that of the President, Fellows, instructors, and students of the College.

In the last of these acts passed by the General Court of the Province, the language of the exemption is as follows: —

Provided, nevertheless, that the following persons, viz., the president, fellows, professors, tutors, librarian, and students of Harvard College who have their usual residence there,. . . .are not to be assessed for their polls or their estate, unless their real estate be not under their actual management and

improvement;....and also all persons who have the management and improvement of the estate of Harvard College are not to be assessed for the same.

Province Laws 1780, chap. 16, sec. 4.

The first act of the General Court of the Commonwealth, apportioning and assessing a tax,— Laws and Resolves of 1780, chap. 43,— contains exactly the same provision as that above copied from the Province Laws of the same year. And this identical clause of exemption is found in all the subsequent acts down to 1784 (L. & R. 1781, chap. 28; 1782 chap. 65; 1784, chap. 23; 1784, chap. 25).

The first clause of these provisions, which exempted the president, fellows, tutors, librarian, and students of Harvard, and later of Williams and Amherst, and of all theological, medical, and literary institutions, and preceptors of academies, was repeated in the various tax statutes, with slight modifications, until 1829, when it was repealed (Acts of 1828, chap. 143, passed March 4, 1829), and we need not further consider it.

In chap. 23 of the Laws and Resolves of 1784, an Act for ascertaining the ratable property of the Commonwealth, the clause exempting the college property is as follows: —

Provided also that all the estate of Harvard College and lands belonging to the Indians are excluded from this Act.

In the Act of 1785 apportioning and assessing a tax, the exempting clause is as follows:

And also all persons who have the management or improvement of the estate of Harvard College are not to be assessed for the same.

And the provision was repeated in substantially the same form in every subsequent Act down to 1801, the exemption being extended to the property of Williams College in 1794 and of Bowdoin in 1795 (1787, chap. 56; 1788, chap. 67A; 1789, chap. 49; 1790, chap. 25A; 1793, chap. 9A; 1794, chap. 9; 1795, chap. 11; 1796, chap. 6 and 51; 1798, chap. 75; 1799, chap. 49; 1800, chap. 77; 1801, chap. 82).

In the Acts passed in 1801, 1811, and 1821, for ascertaining the ratable estates in the Commonwealth (1800, chap. 66; 1810, chap. 79, and 1820, chap. 64) the property of the colleges and academies is excluded from the ratable estates in the following words: —

And also all the estates belonging to the said Harvard and Williams Colleges and to said academies.

And in the Acts for apportioning and assessing taxes in 1802 and subsequent thereto is the provision: —

> And also all persons who have the management of the estates of Harvard Colleges, Williams College, and Bowdoin College, and academies aforesaid in this Commonwealth, are not to be assessed for the same.

This was repeated in each annual Tax Act down to and including 1807.

The Tax Act of 1808 (March 12, 1808) contains the following provision: —

> And that all persons who have the management of the estates of Harvard, Williams, and Bowdoin Colleges, and of the academies aforesaid respectively, shall not be assessed for the same. . . . Provided, however, that nothing in this Act contained shall be so construed as to prevent the town of Cambridge from taxing the houses or lands belonging to the Corporation of Harvard College without the college bounds, in their town tax, excepting such estates as are improved by the president of said college, Professor of Theory and Practice of Physics, Professor of Theology, Professor of Mathematics, and Tutor of Logic, Metaphysics, and Ethics.

This language was repeated in each annual Tax Act to and including 1817. It is clear that the property of the college exempted from the town tax by these Acts of 1808–1817 cannot be other than the separate residences of the officers named. If the property described as the houses and land belonging to the college without the college bounds, and improved by the president of the college, the Professor of Physics, the Professor of Theology, the Professor of Mathematics, and the Tutor of Logic, Metaphysics, and Ethics, does not mean the residences of these professors, allotted to them by the college, it is hard to imagine what these words do describe, for the recitation rooms used by the president and the other instructors named were not at that time without the college bounds, and if they were, they could not be said to be *improved* by these professors.

In 1818 the language of the exemption was the same as that of 1808, except the proviso, which was as follows:

> Provided, however, that nothing contained in this Act shall be so construed as to prevent the town of Cambridge from taxing the houses or lands belonging to the corporation of Harvard College without the college bounds in their town tax, excepting such estates as are occupied by the president of said college, or by any of the professors, tutors, or instructors thereto belonging, or by students, or resident graduates, or shall be unoccupied.

This clearly could operate as an extension of the exemption.

The exempting clause in the Act of 1819 was the same as that of 1818, except that this clause is inserted before the proviso: —

> Nor shall the Massachusetts General Hospital be assessed for any real or personal estate belonging to the same.

The Tax Acts of 1820 and 1821 contained the same exempting clause as in 1819, except that "Bowdoin College" is omitted from the Act of 1821, being then in Maine.

The Act of 1822 was similar to that of 1821, with the following added at the end of the proviso: —

> Or to prevent the town of Andover from taxing such real estate belonging to the corporation of Phillips Academy situated in said town as shall not be under the immediate occupation and improvement of said corporation, or of any person or persons connected with said corporation exempted from taxation by this Act. And provided also, that whenever the real and personal estate of any one of the persons before enumerated as exempted from taxation shall exceed the sum of eight thousand dollars, the excess of such person's estate shall be taxed as in other cases notwithstanding before provided by this Act.

The exempting provision in 1823 and 1824 was the same as in 1822, except that in 1824 the phrase "Berkshire Medical Institution or the Boston Atheneum" is inserted after Massachusetts General Hospital.

We find no State Tax Act between 1824 and 1829.

In 1829 the exempting clause was as follows: —

> Sec. 6. Be it further enacted, that all persons who have the management of the estates of Harvard, Williams, and Amherst Colleges and of the Academies established by law respectively, shall not be assessed for the same, and that Indians shall not be assessed for their polls and estates, nor shall the Massachusetts General Hospital, Berkshire Medical Institution, or the Boston Athenæum be assessed for any real or personal estate belonging to them respectively.... Provided, however, that nothing contained in this act shall be so construed as to prevent the town of Cambridge from taxing the houses or lands belonging to the corporation of Harvard College without the College bounds in their town tax excepting such estates as are occupied by the president of said College, or by any of the professors, Tutors, or Instructors thereto belonging, or by students or resident graduates, or shall be unoccupied, or to prevent the town of Andover from taxing such real estate belonging to the corporation of Phillips Academy situated in said town as shall not be under the immediate occupation and improvement of said corporation.

This language is also found in the Acts of 1830 and 1831.

There was no State Tax Act between 1831 and 1834. The act passed in 1830 for ascertaining the ratable estates for the following ten years excepted

> All the estates belonging to Harvard, Williams, and Amherst Colleges and to incorporated Theological Institutions and Academies and also the estate belonging to the Massachusetts General Hospital and improved for the purposes of that Institution. (Acts of 1830, chap. 130.)

This is the complete legislative history of the exemption from taxation of the property of Harvard College down to 1835. We have included therein the statute exemptions of the other colleges, academies, and educational institutions of the Commonwealth, for the reason that in 1835 the legislation exempting the property of each one of these institutions separately and with particularity was revised and condensed by the employment of general terms into one general provision affecting all of them. This review of the various statutes shows that neither the Colony, the Province, nor the Commonwealth, up to 1835, ever taxed the houses or lands of the College that were occupied by its president, professors, tutors, instructors, students, or resident graduates.

The Commissioners appointed in 1832 "to revise, collate and arrange, as well the Colonial and Provincial Statutes as all other the General Statutes of the Commonwealth which are or may be in force at the time when such Commissions may finally report," reported on the subject in question, in December, 1834, as follows: —

> The following property and polls shall be exempted from taxation, namely,
>
> *Second.* The property of the Massachusetts General Hospital, the Boston Atheneum, and the Berkshire Medical Institution.
>
> *Third.* The property of Harvard College; provided, however, that the inhabitants of the town of Cambridge may, for town purposes, tax such real estate in that town belonging to the Corporation of Harvard College as is not within the college bounds and is not occupied by the president, or any professor instructor, tutor, student, or resident graduate, and also such as shall be unoccupied.
>
> *Fourth.* The property of Phillips Academy in Andover; provided, however, that the Inhabitants of the town of Andover may, for town purposes, tax such real estate in that town belonging to the Corporation of Phillips Academy, as is not under the immediate occupation or improvement of said corporation, or of any person who is connected with said corporation, and is exempted in this chapter from taxation.
>
> *Fifth.* The property of Williams College and Amherst College.
>
> *Sixth.* The property of every academy incorporated under the authority of this Commonwealth.

The Commissioners were instructed in the resolve authorizing their appointment "to execute and complete said revision in such manner as in their opinion will render the said General Laws most concise, plain, and intelligible." There was in the clauses of sect. 5 of chap. 7 of their report, however, little or no attempt at conciseness. The Legislature was evidently of opinion that it could improve the language in this regard, while at the same time equalizing the privilege granted to the various institutions named. And in the Revised Statutes, chap. 7, sect. 5, these five clauses were condensed into the following form: —

> *Secondly.* The personal property of all literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth, and such real estate belonging to such institutions as shall actually be occupied by them or by the officers of said institutions for the purposes for which they were incorporated.

In the subsequent revisions of the statutes in 1860 and 1881, and in the amending Act of 1889, substantially the same language is employed with certain additions that are immaterial in the consideration of this case, and as there is no contention that the Legislatures of 1860, 1881, and 1889, while using the language of the Revised Statutes, intended to change the meaning thereof, the question for us to consider is what changes the Legislature of 1835 intended to make, or what meaning they intended to give to the general, condensed language of the exempting provision above quoted.

If we compare the language of the Revised Statutes with that of the Commissioners' Report, or with the State Tax Act of 1831, of which the Commissioners' Report is a restatement, it becomes evident that the Legislature of 1835 intended —

First. To give all the institutions named in the Statute of 1831, and to all other literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth, the same right to exemption from taxation.

Second. To give to the State and to the Towns of Cambridge and Andover an equal right to impose taxes on the institutions within those towns.

Third. That the mere fact that the property of the College was "within the college bounds" (if that phrase means anything more than "actually occupied by" the College), or that it was unoccupied, should no longer be sufficient grounds for exempting it from taxation.

We think that it is more than probable that property which under the Act of 1831 would be designated as inside the College bounds is included in that which under the Revised Act would be designated as actually occupied by the College.

Fourth. This Court has declared in Williams College *v.* Williamstown, 967 Mass. 508, that the president, professors, and instructors of a college are officers thereof; therefore, by the phrase "officers of the said institution" in the Revised Act, the Legislature must be held to include "the president, or any of the professors, tutors, or instructors" of the Act of 1831. It probably also includes other officers than those enumerated in the Act of 1831.

Fifth. In omitting the phrase, property occupied by the "students or resident graduates," the Legislature of 1835 very likely intended no alteration in the sense thereby, for the reason that they considered that a building of which the college kept the control, which was under the supervision of college officers (resident proctors), in which students' rooms were cleaned and kept in order by college servants (goodies); where all repairs and alterations were made by the college; where the students had no right to the hallways, except to pass through them, or to the rooms except to use them as mere licensees during the college term as dwelling places and studies, was actually occupied by the college, so that we may conclude that the phrase "actually occupied by them," of the Revised Act, includes the same property which under the Act of 1831 would be designated as "within the college bounds," and occupied by the "students or resident graduates."

Sixth. Under the Act of 1831 the purpose of the occupancy was assumed to be educational or charitable in gaining the exemption for the property occupied by the officers designated. Under the Revised Act this assumption is expressed and the occupancy must still be for the purpose for which the institution was incorporated in order to give it the right of exemption.

We believe we have here indicated all the changes that the Legislature of 1835 intended to make in this law of exemption, as it then existed, namely, making it apply to all the institutions designated equally, making the right of State tax and town tax coextensive, increasing the class of officers whose occupancy may gain the right of exemption, and therefore requiring in terms that the occupancy be for the purpose for which the institution was incorporated. Only the latter of these changes is material to this case,— the purpose of the occupancy.

II

"Occupied by the Officers"

As a majority of this Court have apparently based their decision in a recent case upon the quality or kind of occupancy, it becomes important to consider the meaning of this word "occupied" which is used in the statutes both before and since the revision of 1835. When a term of one statute is used in a later statute upon the same subject matter, we have a right to infer that it is used in the same sense in each (Commonwealth *v.* Hartnett, 3 Gray, 450). In the Statute of 1831 we have the words "occupied" and "unoccupied" applied to property "belonging to the corporation." It is evident from this that "occupied" is not used in the constructive sense in which property that has no other occupant is said to be occupied by the owner after he has once taken possession, although the property may at the time be actually "unoccupied." What was necessary under the Statute of 1831 was the *actual* occupancy by one of the officers named. There can be no doubt that under this Statute of 1831 occupancy by a professor under a written or oral lease of property belonging to the college would exempt the college from taxation for the property so leased, for such property would belong to the college and be occupied by its professor, which is literally what the statute required.

As proof of what we have just said, that the Statute of 1831 required actual occupancy, we observe that the word "actually" is used in the Revised Act, the language being "such real estate belonging to such institutions as shall actually be occupied by them, or by the officers of said institutions for the purposes for which they were incorporated." It is true that in the subsequent revisions of this Act, the word "actually" was omitted, but this was "without any apparent intention of changing the meaning," as has been said by this Court. This Court has also defined in the same case what the words "shall actually be occupied by them" (the institution) means in the following manner: —

> The word "occupied" in the statute is not used in the general sense in which a corporation or individual may be said to occupy their real estate when it is not occupied by any one else, but in the sense in which an incorporated college, academy, hospital, or like institution, occupies its college, acad-

emy, or hospital, and the lands and buildings connected therewith. That this was the intention of the Legislature is shown by the Statute of 1878, chap. 214, passed probably in consequence of the decision of Trinity Church *v.* Boston, 118 Mass. 164, which provides that "the real estate belonging to such institutions as are mentioned in the third division of section five of chapter eleven of the General Statutes, purchased with a view of removal thereto, shall not be exempt from taxation for a longer period than two years until such removal takes place."

Lynn Workingmen's Aid Association *v.* Lynn, 136 Mass. at 285.

It is clear that an incorporated institution can "occupy a college, academy, or hospital, or lands or buildings connected therewith" only by its officers or agents; therefore the phrase "actually occupied by them" covers every occupation on behalf of such an institution by its officers or agents.

There is a well-known rule of construction "that every clause and word of a statute shall be presumed to have been intended to have some force and effect" (Opinion of the Justices, 22 Pick. 571, at 573); therefore we must hold that this latter clause, "actually occupied by their officers," means something different from "actually occupied by them" (the institution); it means the occupancy by officers where the officers themselves are in occupation, and not the institution through its officers or agents. This will become more apparent if we remember that "actually occupied by their officers" is a revision of the clause in the Statute of 1831, "occupied by the president," etc.

As we have contended above, the occupancy by "the president, professors, tutors, and instructors" required by the Statute of 1831, and the occupancy by "officers" required by the Revised Statutes of 1835 and the subsequent enactments, is the same kind of occupancy, actual occupancy by the party designated, without qualification as to the degree or completeness of the occupant's control, unqualified as to the right or title under which the occupancy is maintained, and qualified in the Statute of 1835 and its subsequent revisions only in the purpose for which it is maintained; therefore, if we are right in our understanding that the decision of the majority of this Court in the case of Williams College *v.* Williamstown was based on the fact that the officers in that case were held to be tenants at will of the college and had an estate in the property, and were in sole occupation thereof, we are unable to follow the reasoning of that

decision; for we fail to see anything in the Statute of 1831 or in the revisions of 1835, 1860, 1882, and 1889 which makes those facts decisive in determining the question of exemption; for, granted that the officers are tenants at will and in sole occupation of the property, it is still property "belonging to said institution" and is "actually occupied by the officers of said institution," which, so far as it goes, satisfies literally the words of the various statutes.

The fact that the premises are so leased to the occupant as to give him an estate therein may be an important consideration in determining whether the premises are used for the purposes for which the institution was incorporated, and would be decisive of that question in connection with such other facts as that a full rent was received, that exclusive control was given for a definite period not depending on length of service to the college, that the location of the building was such that the college could gain no peculiar advantage from his occupation, or any other circumstances showing that the real purpose of the institution was to acquire profit from the use of the premises. But no one of these facts is by itself decisive of the question of the institution's purpose, which must be determined from all the circumstances surrounding the occupancy.

III

How Occupied in this Case

If, however, we assume that the law is now settled by the Williams College case, so that we must read into the Statute of 1835 the proviso, "Provided it is not so occupied exclusively by said officers as lessees under a written or oral lease," we shall see that the several houses and lots in this case come well within such proviso; because no one of the occupants can be said to be a lessee of the premises in which he lives, or to have any exclusive estate in said premises, but they all occupy their respective premises as licensees merely, and in part, at least, in common with the college and with other college officers.

The president "has no lease of" 17 Quincy Street and the 32,000 feet of land under and adjoining the same. This land is part of the college yard and is therefore in the possession and occupation of the college, and cared for and kept in order by the college superintendent.

Assigning 32,000 feet of the college yard as appurtenant to this house was a mere arbitrary proceeding on the part of the assessors, and they might just as well have made it 60,000 or any other number of feet, and the president has no more possession of this 32,000 feet than he has of the rest of the college yard, or than any other officer or student of the college has. The house was built from a gift left to the college "in aid of the erection of a dwelling-house for the president of the university and his successors," and he and his family occupy the house "if he so chooses, so long as he performs the duties of the office of president." He "pays no rent or compensation for the use and occupation of this house." Part of the house is used for the meetings of other college officers on college business and for the transaction of other college affairs. The house is repaired inside and out, and the furnace repaired and cleaned by college officers, and at the college expense. (Report, pp. 4, 5.)

We submit that these facts show that the premises are not in the exclusive control of the president; that they are occupied in part by the college and its officers; that the president occupies so much of them as he occupies, not as lessee but as licensee; that there is no relation of landlord and tenant, but mere permission to occupy on one side, and on the other, no obligation either to occupy or to pay rent. It is exactly the kind of occupation that is described in the case of Pierce *v.* Inhabitants of Cambridge, 2 Cush. at 613, as exempting college property from taxation: —

> It would be otherwise if the building had been built for one of the professors or officers of the college and had been occupied by the plaintiff with the permission of the college and without having any estate therein or paying any rent therefor.

Of No. 17 Kirkland Street, the grounds are cared for and superintended by the college. The lower story of the house is assigned by the college as a refectory for the Foxcroft Club, an association of students organized for the purpose of obtaining wholesome food at cost. "The Club has had no lease nor fixed term of use" and pays no rent. The upper part of the building is used as a college dormitory in charge of a resident proctor; the whole of this part is repaired, the rooms kept clean, beds made up, etc., by college servants (Report p. 6). It is evident that the students are not lessees. Their relation is more that of lodgers ((White *v.* Maynard, 111 Mass. 250), every college

being, as we have seen above, essentially a boarding-school. In Province Laws 1765–66, chap. 19, as we have seen above, the students' rooms are called "lodging-rooms." This house and lot are clearly occupied by the college through its officers and agents. The other parties are there as licensees.

The houses No. 11 Quincy Street, 25 Quincy Street, and 37 Quincy Street are, like the president's house, all in the college yard; therefore the land about them which has been taxed is all in the occupation of the college. The houses are cared for in the same manner as the president's house. The salary of each occupant "is fixed at a certain sum and the use of house." He pays no rent. Nos. 11 and 25 are used in part for regular college exercises and other different college purposes incident to the office of the occupant (Report pp. 7–9). It is evident that neither of these three professors has any lease of the premises occupied by him and that neither of them is in exclusive control of the houses and lots, but each in so far as he occupies, does so as professor or as professor and dean; in other words, each occupies as an officer of the college and either represents the college or is a licensee.

The occupancy of the other three houses, 16 Quincy Street, 38 Quincy Street, and 11 Frisbie Place, is essentially the same; it differs only in the fact that the houses are not built in the college yard, but the walks, grass, and turf are cared for in just the same way. Each house is used in part by other college officers for college business, and for various college purposes incident to the official duties of the professor who occupies as professor, or as professor and dean, as the case may be, that is to say, he occupies it in his official capacity (Report, pp. 8, 10, 11). As we have said in regard to the others, neither pays rent or is a lessee, nor has he exclusive control of the premises assigned to him.

As the occupants in this case cannot be said to be lessees in exclusive control of these premises, the question remains, Are the several premises occupied for the purposes for which the college was incorporated? And this, as we have above contended, is the sole test.

IV

The Purpose of the Occupancy

When premises belonging to one party are occupied by another by permission or agreement of the owner, as purpose is an act of the mind, and there are two minds involved, there may strictly be two purposes in the occupancy, the purpose of the owner, and the purpose of the occupier, and one may differ widely from the other. The purpose of a landlord may be to get profit, or to use his property for public ends, that of the tenant to get a home, or a place to manufacture goods; the chief end or purpose of one is but the means towards the chief end or purpose of the other. In this case it is the *college's* property that is to be taxed or exempted, and it is the dealings of the college with its property, the use it makes of it, that is to decide the question of its exemption. "The plaintiff's purpose in the use of its farm must be ascertained from its conduct — its acts and the declarations accompanying them" (Mount Hermon Boys' School *v.* Gill, 145 Mass. at 148). In other words, it is the purpose of the college, in the use to which it puts its property, and not the purpose of the occupant (except in so far as his purpose coincides with that of the college) that we are to scrutinize in deciding this question. So this Court, on inquiring into the purpose for which lodging-houses, let by a charitable institution were occupied, decided that it was for the purpose of profit or investment. (Chapel of Good Shepherd *v.* Boston, 120 Mass. 212.)

The purposes for which Harvard College was incorporated are set forth in its charter in the following language: —

> Whereas, through the good hand of God, many well-devoted persons have been, and daily are, moved and stirred to give and bestow sundry gifts, legacies, lands, and revenues, for the advancement of all good literature, arts, and sciences, in Harvard College, in Cambridge, in the County of Middlesex, and to the maintenance of the President and Fellows, and for all accommodations of buildings, and all other necessary provisions that may conduce to the education of the English and Indian youth of this country in knowledge and godliness,—
>
> It is therefore ordered and enacted by this Court and the authority thereof, that for the furthering of so good a work, and for the purposes aforesaid, from henceforth that the said College in Cambridge, in Middlesex, in New England, shall be a Corporation, consisting of seven persons, to wit, etc.

Thus the main purpose is "the advancement of all good literature,

arts, and sciences in Harvard College" and "the education of the... youth of this country in knowledge and godliness." But this great purpose requires for its accomplishment various instrumentalities, various intermediate steps or means, and the acquirement and use of each one of these instrumentalities, the accomplishment of each one of these intermediate steps, becomes part of the main purpose which it is designed to assist in effecting. This would be true even if the college charter were silent as to the manner or means of effecting the main purpose; for the ultimate purpose characterizes each intermediate step, and thus the necessary means become part of the purpose.

This is exactly what the college charter declares, for among the "aforesaid purposes" it enumerates "the maintenance of the President and Fellows, and for all *accommodations of buildings* and *all other necessary provisions*." After this general declaration of the purposes for which the college is incorporated, it particularizes some of the "necessary provisions," of which the following deserve particular attention: —

> And the President and Fellows, or the major part of them, from time to time, may meet and choose such officers and servants for the College, and make such allowance to them, and them also to remove, and after death or removal, to choose such others, and to make from time to time such orders and by-laws for the better ordering and carrying on the work of the College, as *they shall think fit*....
>
> And for the better ordering of the government of said College and Corporation: Be it enacted, etc....And that all the aforesaid transactions shall tend to and for the use and behoof of the President, Fellows, scholars, and officers of the said College, and for *all accommodations of buildings*, books, and all *other necessary provisions* and furnitures as may be for the advancement and education of youth in all manner of good literature, arts and sciences.

For two centuries and a half this charter of 1650 has remained to this day "the venerable source of all collegiate authority." And notwithstanding the great alterations in the mode of life of the community, the great enlargement of the range, and improvements in the methods, of education, the enormous increase in the number of students and instructors, and the changes which two hundred and fifty years have wrought in the social life of the college, it has proved to be a sufficient source, mainly because of the wise elasticity given to it by its framers in making its corporate purposes include *all necessary provisions* and making its president and fellows the sole judge of what is necessary "for the better ordering and carrying on the work of the

college''; and never yet has this Court sought to narrow the charter purposes of the incorporation, or to limit the charter authority of its government in deciding what are "necessary provisions" for accomplishing those purposes.

On the contrary, in the case of the Massachusetts General Hospital *v.* Somerville, 101 Mass. 319, this Court in the case of an institution whose charter is less explicit in granting a like discretion to the governing board, recognized and declared the doctrine for which we are here contending, in the following language: —

> Wells, J. The plaintiff is a benevolent institution, incorporated within this Commonwealth. By Gen. Sts. c. 11, par. 5, cl. 3, "the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated," is exempted from taxation.
>
> The statute contains no limitation of the amount of real estate that may be thus held exempt from taxation; and we know of no authority under which, or rule by which, the Court can affix any such limitation. The only condition upon which the exemption depends is the proviso as to the purposes for which the real estate is occupied.
>
> In construing and applying this proviso, the Court cannot restrict it to the limit of necessity. The statute does not indicate such an intention on the part of the Legislature; and we do not think that any considerations of public policy require us to confine the exemption to narrower limits than the terms of the statute fairly imply. What lands are reasonably required, and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers. The statute leaves it to be so determined, by omitting to provide any other mode. In the absence of anything to show abuse, or otherwise to impeach their determination, it is sufficient that the lands are intended for, and in fact appropriated to, those purposes...The presumption is in favor of their judgment, and it requires more than mere difference of opinion upon a matter of opinion especially confided to them to overcome that presumption.

We submit furthermore, that every piece of real property which is put to a legitimate use by the college, or to a use authorized by its charter and statutes, must be used for the purposes for which the college was incorporated or for the purpose of getting an income from it; and every piece of real estate owned by the college must be held either for the purposes for which it was incorporated, or for the purpose of investment, or it may be held temporarily unused or unoccupied awaiting its later appropriation to one or the other of these purposes. The college has a right to invest its funds in real estate to an unlimited extent for the purpose of producing in income with which to carry on

the work of the college, or to carry out the purposes for which it was incorporated; but it has no right, for instance, to run a hospital exclusively for the general public. It has a right, however, to run a hospital for its students, if its governing body decide that to be necessary for their well-being. It has no right to maintain a gymnasium, a playground, a boat-house, a church, an art museum, or assembly halls for the exclusive use of the public, but all of these institutions in Cambridge for the use of the students and officers of the colleges are clearly authorized, though the college derives no income from them, because although some of them probably never entered into the minds of the founders of the college, they are considered necessary in every well-regulated college, because of the great changes that time has wrought in the scope and methods of an educational institution; and therefore they come well within the "necessary provisions" of the college charter. We take it to be clear, then, that every piece of real estate of the college that is legally put to any use, is used either for investment or for the purposes for which the college was incorporated. And to determine whether a piece of property is exempt from taxation, the inquiry is, for which of these purposes is it used, the purpose of investment, or for college purposes? If for investment, this Court has held it is taxable; if for college purposes, it is not taxable.

Before the Williams College case this was the test and the form of inquiry employed and announced by this Court. Thus in Wesleyan Academy *v.* Wilbraham, 99 Mass. 599, the question being whether a farm used by an educational institution solely to raise produce for a boarding-house kept by the institution, to supply board to the students at its actual cost, was taxable, Chapman, J., says: —

> It does not appear that any profit is made by the plaintiffs out of what is furnished to the boarders; but an account is kept, and the cost of the production is reckoned, and enters into the price of board. The object of the plaintiffs is to furnish the students with cheap board; and this is one method of cheapening it, the whole benefit of the arrangement being allowed to them. So far as these students are concerned, it is a boarding-school, and in respect to board, as well as school-rooms, apparatus, and tuition, the ultimate purpose is to furnish cheap education.
>
> If the boarding-house and farm had been rented to a boarding-house keeper, the case would have been like that above cited. It would be the same if the plaintiffs carried on their farm and sold the produce at its market price for the use of the students, in order to make a profit as farmers or as dealers in milk and vegetables. But as it is managed, the object not being to make a

profit to the funds of the institution, but to benefit the students, it is as really used for the purpose for which the institution was incorporated as the buildings and school apparatus.

So in Massachusetts General Hospital *v.* Somerville the Court gives the following reason for holding that property would be exempt, although rent was paid by the occupant and received by the institution, saying that the exemption would attach: —

If....the rent was paid and received in the manner stated as a convenient mode of adjusting the compensation of the person so employed, and not as the income or fruit of an estate granted....By the ruling of the Court below, as we understand it, the question was made to turn upon the single fact of the payment and receipt of rent. This we think was erroneous.

So the bare fact that rent was paid and received does not prove that the property is used for investment, nor is it inconsistent with the fact that it is used for the purposes for which the institution was incorporated.

In the case of Chapel of the Good Shepherd *v.* Boston, as we have seen above, the lodging-houses were held not to be exempt because the statute "did not make the purpose of investment and profit, for which these rooms were improved and used, a charitable or religious purpose in any legal respect."

In Mount Hermon Boys' School *v.* Gill, 145 Mass. 139, where it was the question whether the statute exempted from taxation a farm and buildings thereon, consisting of two farm-houses, a wood-house, two barns, two sheds, two tobacco-barns, and a milk-house, belonging to a school incorporated under Public Statutes, chap. 115, for the "education of boys," and worked mainly by the scholars, the produce being used to board the scholors and the surplus sold at market rates, the same test was applied, namely: is the property used for investment or not?

Knowlton, J. Was this farm practically used to teach the boys agriculture, and give them physical training, and furnish them manual labor as a part of their education? Was it used to furnish supplies directly to this boarding-school, and so lessen the cost of education there? Or was it, on the other hand, used to produce revenue, and earn income which might afterwards be expended for the school? It seems to us that the farm and the property upon it were used in the legitimate management of the school, directly to accomplish its purposes, and not to obtain money for subsequent use in accomplishing them. The fact that products were sold is a circumstance important only so far as it characterizes the use. We think that the sales were merely incidental to a use for the purposes of the institution.

From this we see that it is not inconsistent with the right to exemption that some income or pecuniary profit is incidentally derived from the use of the property, if the main or immediate purpose of the institution is to use it for the purpose for which it was incorporated.

In the case of Salem Lyceum *v.* Salem, 154 Mass. 15, where the Court held the main purpose to be to get a profit, this principle was declared in the following language:—

> W. Allen. J. The exemption from taxation does not extend to estate owned by the plaintiff, and allowed by it to be occupied by others, with the purpose of deriving income to expend in diffusing knowledge and promoting intellectual improvement in Salem. Those are the purposes for which the estate must be occupied by the plaintiff itself to exempt it from taxation. If the principal occupation is by the plaintiff for those purposes, occasional and incidental use for other purposes might not render it liable to taxation; but when the substantial use and occupation is for the purpose of deriving income from it, it makes no difference if that income is used to provide a course of lectures once a year in the hall.

The decisions of the Court in the two cases of New England Hospital *v.* Boston, 113 Mass. 518, and Trinity Church, 118 Mass. 164, are also in accordance with this rule, though the rule is not stated in the opinions. In the latter case a few piles had been driven into the ground preparatory to erecting a house of religious worship; in the former, an architect had been employed to draw plans for a hospital, and had viewed the ground preparatory to building; in both cases, the Court held that the lands were occupied for the purposes for which the institutions were incorporated.

The next case in which this question arose is that of Williams College *v.* Williamstown, 167 Mass. 505, and here it seems to us we have an entire departure from the rule laid down in all prior cases by this Court for ascertaining whether or not the property in question is occupied for the purpose for which the institution was founded. We doubt whether it is so much the decision in that case as it is the reasons given in the opinion of the majority of the Court that has caused the assessors of almost every town in the Commonwealth which contains a literary, benevolent, charitable, or scientific institution, to change the settled policy of years by assessing for the first time in their history every piece of real estate belonging to those institutions, that is not used as a direct instrument or as an indispensable requisite for educating the young, or curing the sick, or bestowing charity upon the

poor. And we have great doubt whether this Court ever intended that the decision in that case should serve as a ground for changing the settled policy of the Commonwealth and of the cities and towns for over sixty years. But if we bear in mind that heretofore the test applied by the Court was whether or not the property was used as an investment and that the mere payment and receipt of rent for the property, or the receipt of some pecuniary profit therefrom, was not necessarily decisive of that question, we must admit that there was an entirely different rule announced in the following language of the Court in the Williams College case:—

> The most important contention of the respondents is that these occupants were tenants at will of the estates respectively, and that the occupation was for the purpose of a residence, and not for the purposes for which the college was incorporated. A majority of the Court are of opinion that this is the true view to take of the facts found by the commissioner, and of the evidence....
>
> In the present case the occupants were each in the sole occupation of the premises, and the occupation was for strictly private purposes, and the control of the premises during the occupation was with them. That the rent was paid by a deduction made by the college monthly from the salary, instead of being paid directly to the college is immaterial.

It may be that the Court was of opinion that Williams College had let these houses to its officials mainly for the rent it was getting for them, as an investment of its surplus funds, but it has not so stated and we doubt whether the facts would justify such an inference. We think it would be in accordance with the decision, and reasoning, in Massachusetts General Hospital *v.* Somerville to hold that these houses were not occupied for the purpose of investment.

In holding that the occupation was for the purpose of a residence "a strictly private purpose" and therefore not for the purpose for which the college was incorporated, we contend that the Court has in the first place ignored an incontestable fact of which it ought to take judicial notice, because it is part of the definition of the word "college," and is also a part of the history of this country and of England; namely, that the providing of residences for its instructors and students is within the scope of the purposes of the college. It has been the practice of every one of the great colleges from the time of their foundation, as we have attempted to show above; and there are few, if any, colleges in this country or any other country, where it is not the practice at the

present time, which of itself goes to show that it has proved a wise and salutary practice, if not one absolutely necessary for the proper discipline and supervision of the students.

In the second place, it has ignored the rule of construction announced in the case of Massachusetts General Hospital *v.* Somerville which recognized the right of the governing body of the institution to decide what uses of its property will promote the purposes for which the institution was incorporated.

> In construing and applying this proviso, the Court cannot restrict it to the limit of necessity....What lands are reasonably required and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers.
>
> See Peirce *v.* Boston & Lowell R. R. Co., 141 Mass. 481.

In the third place, in saying that the buildings were occupied for the purpose of residences, it is evident that the Court has in mind the purpose of the occupants and not of the college, and they have therefore departed from the rule founded on sound reason and the declaration of this Court, as we have already seen, that it is the institution's conduct in regard to its own property, its own acts, and the declarations accompanying them showing its purpose that render its property taxable or untaxable. The purpose of the occupant may be to acquire a residence, but we submit that his purpose cannot determine the taxability of the institution's property. The real question is, What is the purpose in the mind of the governing body of the institution in having the property occupied in that particular way; namely, what is the purpose of its occupation as a residence by that particular officer? If it is put by the college to a legitimate use, or one authorized by its charter, that use must be either for the purpose of investment or for the purpose for which it was incorporated, as we have seen above; it must be for the rent it gets from it, or for the more efficient service it will get from its officer by putting him in such close relation to the institution and students that he will be the better able to perform the services which he has to render to the college, or for some other advantage to its educational ends which it may get from this form of occupation.

To say that property is occupied for the purpose of a residence is to describe the kind of occupancy rather than the purpose of it. If we should apply the reasoning of the Williams College case to the

other cases decided by this Court, we should have to say in Wesleyan Academy *v.* Wilbraham, that the property was occupied for the purpose of a farm; in Massachusetts General Hospital *v.* Somerville, that the land was occupied for the purpose of keeping it vacant, and the house for the purpose of a residence; in New England Hospital *v.* Boston, and Trinity Church *v.* Boston, that the property was used for the purpose of building upon it at some future time; in Mt. Hermon Boys' School *v.* Gill, that the land was used for the purpose of a farm and the houses for the purpose of residences, for storing wood, tobacco, and other farm products and for a dairy, all strictly private purposes; and as none of these purposes come within the purposes for which any of these institutions were incorporated, that the several properties were taxable. But the Court held that the properties were exempt because the questions which they asked and answered were: For what purpose is this land used by the institution as a farm, that land held vacant, and these others occupied for building? For what purpose is this building used by the corporation as a residence, that used as a barn or shed, and this other for a dairy? So, therefore, we repeat, that the question to be answered in the Williams College case was, for what purpose were these houses used by the college as residences?

This case, however, is clearly distinguishable from the case of Williams College in several important particulars, some of which we have already pointed out. So that even if we accept the reasoning and the decision of the Williams College case, we can still claim with confidence that the several houses and lots in this case are exempt under the statute.

As to the house and lot No. 17 Kirkland Street, occupied as a students' dormitory and a dining-room, no such occupation was in question in the Williams College case, but the Court there admits that "if a professor lived in rooms in the dormitory of a college which remained under the general control of the college, and a deduction of a certain sum of money on account of such occupation was made from his salary," the property would be exempt. We have already shown that this building and lot are under the general control of the college, and that none of the occupants can be described as tenants or lessees of these premises. We have seen that the first building of Harvard College, finished in 1639, contained a dormitory or rooms for students and instructors, and a dining-room, and that dining-rooms and dor-

mitories have ever since been maintained by the college, and so far as we know there never was a college without them. This is the first attempt ever made in this Commonwealth to tax college dormitories or dining-rooms. Under a substantially similar statute in Connecticut, an attempt was made at New Haven to tax both. The Supreme Court of Connecticut in a very learned opinion has held that dormitories and dining-halls are exempt.

Yale University *v.* Town of New Haven, 71 Conn, 316.

In view of the intimation above quoted from the Williams College case, as to college dormitories, and the fact that this Court has already held that a farm worked by an educational institution for the purpose of furnishing products to be consumed in the students' dining-room is exempt (Wesleyan Academy *v.* Wilbraham, 99 Mass. 599; Mount Hermon Boys' School *v.* Gill, 145 Mass. 139), we deem it unnecessary to argue further in support of the exemption of 17 Kirkland Street.

We have seen that the second building erected by Harvard College was the president's house. This was erected from funds furnished the college by the Colony of Massachusetts Bay at a time when neither the college nor the Colony had any surplus funds or property to invest for the purpose of an income. We have also seen that the government of the province, at times when the college had no means of its own to devote to such purposes, appointed committees to procure or hire a suitable place for a residence for the president and his family, and appropriated so large a sum as £1000 to build Wadsworth House. As to No. 17 Quincy Street, the present official residence of the president, we have seen that it was built from funds specially left to the college for that purpose, and therefore the college has no right to let it to any one else. Unlike any of the houses in the Williams College case, the president, as we have stated above, has no lease of said house and pays no rent therefor; he is not in sole occupation, because the land about it is in the occupation of the college, and part of the house is at times occupied by other college officers in carrying on the work of the college, and is used by the president while attending to various college duties. College servants have a right to enter upon the grounds assessed with this house and to repair the house. The president occupies the house only so long as he performs the duty of the office of president; he therefore occupies it solely by reason of service, and

therefore, as laid down in Massachusetts General Hospital *v.* Somerville, 101 Mass. at 326, he occupies it for the purposes for which the college was incorporated.

The occupants of 25 and 38 Quincy Street and 11 Frisbie Place are deans as well as professors. If the dwelling-house in which the president lives should be held to be exempt because it is essentially a college purpose to have and furnish a house for the president, then as the deans "are charged each with a portion of the administrative duties which formerly devolved exclusively on the president" (Report, p. 11), it is equally a legitimate college purpose to furnish official residences for them.

In other respects the six houses occupied by the professors need not be considered separately, as the facts and circumstances in regard to each are substantially the same. The occupation of these houses and lots differs from that of the houses in the Williams College case, in that none of the occupants are in sole occupation, the college, other college officers, or the students occupying parts of each for some time each day.

We have pointed out already that these professors cannot be called tenants or lessees, as they have no lease of their premises; but even if they were tenants at will, they still pay no rent and occupy the premises solely by reason of the service they render, and the property is therefore occupied by them officially and for the purposes for which the college was incorporated. The following facts are agreed to in regard to each: "When his salary is voted in the fall of each year, it is fixed at a certain sum 'and the use of house $900' (or other sum), otherwise Professor. . . . pays no rent and has no other agreement for his use and occupation of said house, but uses it as said professor and dean" (in cases where he is dean as well as professor).

It will be noticed that this is quite a different arrangement in legal effect from that in the Williams College case. There the salaries of the professors were fixed at a certain sum, the value of the occupation was fixed, and they were paid monthly in cash one-twelfth of such salary less one-twelfth of the value of the occupation (167 Mass. at 507). In that case we have an obligation on the part of the college to pay a fixed sum as salary for services rendered, and on the part of the officers an agreement to pay a fixed amount as rent or compensation for the use of the house. The college paid a salary, and gave the use of a house; the officers rendered service for the salary,

and paid rent for the house. In our case there is no rent paid; the college pays a salary, and gives the use of a house valued at a certain amount in return for services rendered, as it did with the Dunster house; the services rendered are therefore paid for in part in cash, and in part by allowing the officer to use the house. The house is occupied by reason of the services rendered, and not by reason of rent. There can be no doubt that the college has a right to devote its real estate as well as its cash to such use; the college charter authorizes the president and fellows "to make such allowance to them," the officers, "as they shall think fit." Now it cannot be denied that the money which the college pays as salary to its professor is used for the purpose for which it was incorporated. It is just as certain that the real estate which the college "allows" him in part payment for his services is devoted to the same purpose.

It accords with our contention that the Supreme Court of Connecticut within a year has decided that two houses furnished by Yale College for the officers of its observatory are exempt from taxation, under a statute exempting "buildings or portions of buildings exclusively occupied as colleges."

Yale University *v.* New Haven, 71 Conn. 316.

V.

Practical and Legislative Construction

We have thus far seen what the judicial interpretations of the statute under discussion have been up to the present time, but we find in the practice of the cities and towns continued for more than sixty years, and in the three enactments since the Revised Statutes of the statute in question by the General Court of the Commonwealth, both a practical and a legislative construction of that statute which deserve careful consideration, for such interpretations have always been given the greatest weight by this Court.

A cotemporaneous is generally the best construction of a statute. It gives the sense of a community, of the terms made use of by a Legislature. If there is ambiguity in the language, the understanding and application of it, when the statute first comes into operation, sanctioned by long acquiescence on the part of the Legislature and judicial tribunals, is the strongest evidence that it has been rightly explained in practice. A construction under such circum-

stances becomes established law; and after it has been acted upon for a century nothing but legislative power can constitutionally effect a change.

Parker, C. J. Packard *v.* Richardson, 17 Mass. at 144.

On these legislative and judicial practical expositions of the declaration in favor of trials in the vicinity we might repose with confidence, for contemporaneous and continued constructions of an instrument, whether by express judicial decisions or uniform practice, are admitted to be a legitimate ground of interpretation.

Parker, C. J. Commonwealth *v.* Parker, 2 Pick. at 557.

Gray, C. J., in commenting upon the reënactments of the Statute of 1817, chap. 142, in the Revised and the General Statutes, says:—

They have been constantly applied in practice, and repeatedly expounded by this Court, without a doubt of their validity being suggested, for nearly sixty years. After so long a practical construction and acquiescence by the Legislature, by the Courts, and by all parties to judicial proceedings, it would require a very clear case to warrant the court in setting them aside as unconstitutional.

Holmes *v.* Hunt, 122 Mass. at 516.

These houses, or houses similarly occupied, have belonged to Harvard College ever since the passage of the Revised Statutes, but never till 1897 has the city of Cambridge made any attempt to tax them; they have for more than sixty years been considered and treated as exempted property under the exempting clause of the Revised Statutes and the subsequent enactments. And not till 1895 did the assessors of Williamstown or any other city or town, with the sanction of this Court, tax property occupied as the Williams College houses were occupied. If this course were due to a misconstruction of the statute, if it were not in accordance with the real legislative intent, it is hardly possible that the Legislature would not have corrected the error by an amendment declaring the true intent and meaning of the act. But instead of any such amendment, we find the General Court, in face of this practical interpretation put upon its act, reënacting the same statute in the same terms in 1860, in 1881, and in 1889. We submit that these reënactments amount to legislative declarations that the practical construction of this statute by the cities and towns is the true construction, and only an act of the Legislature can change it.

But before the General Court shall change this construction of the exempting statute, or narrow the scope of the college, or deny it that

encouragement which has at all times been extended to it, the Legislature will have become unmindful of the sacred duty imposed upon it by the Constitution of the Commonwealth, which in the same breath created the General Court and gave renewed life to Harvard College, for not only does the Constitution of Massachusetts confirm to Harvard College all its franchises, property, and immunities, but it admonishes all future legislatures and magistrates to cherish all seminaries, and especially the university at Cambridge, in the following language: —

> It shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them, especially the university at Cambridge:

and

> to encourage....immunities for the promotion of....arts, sciences, etc.
> Constitution of Mass., chap. 5, sect. 2.

This duty is imposed as solemnly upon this Court as upon the Legislature.

SAMUEL HOAR,
WILLIAM SULLIVAN,
for the Petitioners.

BRIEF FOR ASSESSORS OF CAMBRIDGE

Construction of Statute at Issue

The issue involves a judicial construction of Chap. 469, sect. 5, clause 3 of the Statutes of 1889 as applicable to the several properties occupied as above described.

The section under consideration is as follows, exempting

> *Third.* The personal property of literary, benevolent, charitable, and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they were incorporated.

The general law (Public Statutes, chap. 11, sect. 2) explicitly subjects to taxation all property "not expressly exempted."

Exemptions, thus being an exception to the general rule, are regarded as in derogation of equal rights, and the tendency of the courts is to construe them strictly.

Redemptorist Fathers *v.* Boston, 129 Mass. 178.
Mt. Hermon Boys' School *v.* Gill, 145 Mass. 144.
Cincinnati College *v.* State, 19 Ohio 115.

It is a familiar principle that no exemption from taxation can be allowed except upon its being fairly shown that it was intended by the terms of the Statutes.

Third Congregational Society *v.* Springfield, 147 Mass. 396

History of this Legislation

Prior to Revised Statutes of 1836, certain exemptions had been provided by law for Harvard College, with certain exceptions in favor of local taxation in Cambridge.

Harvard College *v.* Boston, 104 Mass. 489, citing.
Harvard College, *v.* Kettell, 16 Mass. 204.
Statutes 1821, Chap. 107, Sect. 6.
Statutes 1830, Chap. 151, Sect. 6.

As the Court, Wells, J., says:—

This course of legislation led to the adoption of the qualified general exemption contained in Revised Statutes, chap. 7, sect. 5, which was as follows:—

The following property and polls shall be exempted from taxation.

Secondly. The personal property of all literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth, and such real estate belonging to such institutions as shall actually be occupied by them or by the officers of said institutions for the purposes for which they were incorporated.

This was subsequently reenacted in General Statutes, chap. 11, sect. 5, clause 3, which was as follows:—

Third. The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.

This statute appears in Public Statutes, chap. 11, sect. 5, clause 3, in the following form to wit:—

Third. The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this Commonwealth and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated; but such real estate, when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal be exempt for a longer period than two years; and the real estate of such corporations formed under general laws shall not be exempt in any case where part of the income or profits of their business is divided among their members or stockholders, or where any portion of such estate is used or appropriated for other than literary, educational, benevolent, charitable, scientific, or religious purposes.

This last statute is substantially the same as the Statute of 1889, chap. 465. sect. 1 before cited (page 1).

It is apparent therefore that the Revised Statutes codified the existing laws and limited the exemptions of real estate belonging to corporations as the plaintiff to such as "shall actually be occupied by them or by the officers of said institutions for the purposes for which they were incorporated."

That the intent of the Legislature by this provision of the Revised Statutes and the subsequent later provisions as now found in said chap. 465 of the Acts of 1889, was to restrict the terms of the then (1835) existing law is apparent from the construction recently placed upon the statute in question in Williams College *v.* Williamstown, 167 Mass. 507.

But it may be said that this was not the intent of the Legislature for the reason that subsequent to the revision of 1835, to wit: by Statutes 1840, chap. 28; Statutes 1850, chap. 22; and by Statutes 1860, chap. 45, when the Legislature passed statutes to ascertain the ratable estate within this Commonwealth it exempted from the operation and assessment of the State tax the estates belonging to Harvard.

So Justice Wells seems to have said in his opinion in Harvard College *v.* Boston, *supra* 488, in contradistinction as the defendant claims to the later decision in Williams College *v.* Williamstown, *supra.*

The Statutes of 1840, 1850, and 1860 before cited are substantially the same as Statutes 1820, chap. 64, and 1830 (1831?), chap. 130, cited by Justice Wells.

The last named statute provides that "the assessors for each city, town, district, or other place within this Commonwealth for the year 1831 shall on or before the first day of October next take and lodge in the Secretary's office a true and perfect list conformably to the list

hereto annexed....of all ratable estate both real and personal lying within their city, towns, districts, and other places *not exempted by law from paying State taxes*, expressing by whom occupied or possessed, particularly mentioning dwelling houses, etc....

"And the said assessors in taking the said valuation shall designate the *different improvements of land* and return the list in the following manner...excepting all the estates belonging to Harvard, Williams, and Amherst Colleges, and to incorporated theological institutions and academies, and also the estate belonging to the Massachusetts General Hospital and improved for the purposes of that institution."

This exception in these various statutes has reference only to the real subject matter of that clause "the distinguishing of the different *improvements of the land*" next to be more specifically stated, and did not relieve the assessors from taking and lodging with the Secretary a true and perfect list of all ratable estate both real and personal... *not exempted by law from paying State taxes.*

Hence it does not appear from these statutes, as may be claimed, that the legislative purpose and intention was to exclude from taxation the houses of presidents, deans, and professors owned by the institutions and occupied by such officers and their families.

Omissions to Tax

The omission to tax these properties for years before (top of page 6 of Report) cannot add anything to the argument in favor of further exemption, if such exemption has all the while not been justified in law. Such a doctrine of prescription as this does not seem to be known in law.

Question at Issue

It being admitted that the plaintiff is one of the corporations named in the section of the statutes now under consideration, the general question, as applicable to all the properties named in the Report, is whether or not such occupation of the houses and land contiguous thereto is *by the Corporation, or its officers and for the purposes* for which the plaintiff was incorporated.

Williams College *v.* Williamstown, 167 Mass. 507.

If the exemption is not applicable to the houses neither does it apply to the several pieces of land appurtenant to the houses.

Trinity Church *v.* Boston, 118 Mass. 167.

The removal of fences and monuments about and connected with Nos. 11, 17, 25, 37 Quincy Street (Report, p. 4) did not thereby separate the houses from the lands respectively appurtenant thereto.

For convenience and to secure a uniformity in the appearance of the grounds may have been the purpose and reasons for the removal of such fences and monuments.

Officers of the College

It is admitted that the presidents, professors, and instructors are officers of the college. It is so decided in Williams College *v.* Williamstown, 167 Mass. 507.

Meaning of "Occupied"

"Occupied" denotes continuance and full possession. "Occupied by" a corporation denotes a corporate or official occupancy, and not a personal occupancy by one who is such an officer, though only so does he become an eligible occupant; and "occupied for" a special purpose denotes the continuous use the realty is put to, its primary function, the direct purposes to which it is devoted, *i. e.*, a store, residence, bakery, dormitory, laundry, refectory, music hall, schoolhouse, lecture or recitation halls, play rooms, etc., but not a casual or incidental use, or a collateral purpose, that the occupancy may subserve.

And the exempted realty is also clearly limited to and conditioned upon an occupancy whose purpose is that for which the included institution was incorporated, and the very purpose which includes it among the favored institutions; that is, the purpose of the occupancy and the including purposes must be the same.

To relieve from taxation the property must be shown to have been necessarily occupied by the institution or its officers for the purpose for which the institution was incorporated. The court has manifested no inclination to enlarge the exemption.

Massachusetts General Hospital *v.* Somerville, 101 Mass. 321.

"Occupied for" means the primary purpose of the occupancy, not something incidental, as in case of a parsonage. The occupant may at times worship, yet the primary purpose of the occupation is that of a residence, and is taxable.

A printing establishment built upon land belonging to the college but separate from other land of the college, in which books are manufactured, to be purchased and used exclusively by the students of the college, is not occupied for the purposes for which the college was incorporated.

The primary purpose of the printing establishment is the manufacture of books, though the use to which the books may be put may be of assistance in the education of the college students. The primary purpose of the college is the advancement of learning and education.

As there may be several distinct tenements under the same roof,— one may be under the other,— one may be side of another (Proprietors of Meeting House in Lowell *v.* Lowell, 1 Met. 541); so there may be different and distinct occupancies of the same house belonging to a college; but the occupancy must be either one or the other, either for secular or college purposes; if both, the exemption cannot apply.

It must at least be that the dominant purpose of the occupation by the president and professors (and of the house 17 Kirkland Street) was not private, but that for which the college was incorporated. (Holmes, J., in Amherst College *v.* Amherst, 173 Mass. 233.)

Manner of Occupancy

In reference to the president's house and the houses occupied by the other professors and their families, and following the reasoning in Mount Hermon Boys' School *v.* Gill, 145 Mass. 148, we must see what was the purpose of the occupancy of these houses,— was it for literary, educational, benevolent purposes, or in the language of the constitution "for the encouragement of arts, sciences, and all good literature," or was it for their (the president's and professors') own interests and convenience and that of their families. (Constitution of Massachusetts, chap. 5, sect. 1, art. 1.)

It has been held that rooms occupied by tenants for hire of a corporation established for charitable uses are not exempt, although the income derived therefor was used for such purposes.

Trustees of Chapel of Good Shepherd *v.* Boston, 120 Mass. 212.

This decision was made on the ground that such a use and occupation was not an occupation by the corporation for the purposes for which it was created; the occupancy was for living purposes.

What distinction can there be in the cases at issue in which the houses were occupied by the president and professors with their families?

Was not the real substantial use by them in each case for living purposes very much in excess of that for strictly college purposes? Even the drawing-room and hall, when not in use for strictly college purposes, were occupied as part of the living rooms.

The principal use was not that for college purposes, following the decision in Salem Lyceum *v.* Salem, 154 Mass. 16, 17.

The fact of occupancy by an officer of the college of a certain portion of a house does not create an occupancy of the whole or greater part of the house occupied by his family.

The use of these several houses was not of necessity in order to enable the college to accomplish its work of education, but as the Report says, "partly for his own convenience and partly for the convenience of the college" (Report, pp. 5, 7, 8, 10, 11).

So, also, as to No. 25 Quincy Street (Report, pp. 8, 9) it appears that the occupation thereof by the professor is for the convenience of and not required by the necessities of the college (Report, p. 9).

The president and professors were also in the sole occupation of the respective premises used by each, although at times certain portions are used for college purposes. The real, substantial occupation was for private purposes. There is no evidence that the real control of these houses was other than in the occupants. It does not affect the control of the land connected with the houses that the same was kept in order by the college at the expense of the latter, under the direction of the college superintendent and for the most part by college employees. There is no evidence that the right of the occupant of any house to use the land adjacent to the building is at all interfered with or lessened in this care of the grounds or otherwise. For all that appears in the Report, such care and superintendence is part of the consideration for which the occupant renders his services.

Facts of Occupancy

The agreed facts then present the seven houses and their plots as family residences, severally occupied by a man and his family; such occupants of one house being the university president and his family, and of the others, college officials and their families.

Thus these occupancies exclude exemption:—

First, as residential.

> Pierce *v.* Cambridge, 2 Cush. 611.
> Williams College *v.* Williamstown, 167 Mass. 505.

Second, as personal, private and not official. Temporary uses of a reception room for gatherings of any sort, social, religious, collegiate, are appropriate uses by the occupants in course of their family occupancy, and they no more interrupt that occupancy and initiate another one by the guests than do like appropriate uses of a dining-room, chamber, or other part of the house.

Rent as Affecting Occupancy

The question of rent or lease or the manner of payment of the rent is important only as bearing upon the nature of the occupation and whether the occupation is in fact for the purposes for which the plaintiff was incorporated.

> Pierce *v.* Cambridge, 2 Cush. 611.
> Massachusetts General Hospital *v.* Somerville, 101 Mass. 326.
> Mount Hermon Boys' School *v.* Gill, 145 Mass. 145.
> Williams College *v.* Williamstown, 167 Mass. 509.

In Trustees of Wesleyan Academy *v.* Wilbraham, 99 Mass. 603, Chapman, J., says, "In Pierce *v.* Cambridge, 2 Cush. 611, a construction was put upon a similar provision of the statute (*i. e.* similar to chap. 11, section 5 of the General Statutes) then existing. It was held that although the plaintiff was a professor in Harvard College, yet a house belonging to the corporation was not exempt from taxation while he held it under a lease from them, paying rent therefor." Then the Court goes on to say further, "If he had occupied without taking a lease or paying rent, the Court say it would have

been otherwise. It was held to be taxable, because the present estate was in the lessee and the corporation had only a reversionary interest."

These last statements taken by themselves might seem to appear that the question whether or not the estate was taxable depended upon the fact whether or not he was paying rent therefor.

But upon further reading of the opinion, it is apparent that the decision of the Court was in reality based upon the purpose for which the same was occupied, or to use the language of the Court, "But as it (*i. e.*, the estate in question) is managed, the object not being to make a profit to the funds of the institution, but to benefit the students, it is as really used *for the purpose for which the institution was incorporated* as the buildings, and school apparatus." (The italics are mine.)

Exemption of Church Property

So as to exemption from taxation of church property; "the exemption depends upon the use for which the building in question is intended and is limited by such use."

Old South Society *v.* Boston, 127 Mass. 379.

And this exemption is extended only to such part of the property which was used as a place of worship and for the purposes connected with it, such as the vestry, the furnace and the like.

Lowell Meeting House *v.* Lowell, 1 Met. 158.
Old South Society, *v.* Boston, *supra* 379.
Trinity Church *v.* Boston, 118 Mass. 164.

And does not exempt a parsonage.

Third Congregational Society *v.* Springfield, 147 Mass. 396.

Real Purpose of Occupation

Can it be contended that a house owned by a college located separately anywhere else than upon the ground which forms a part of the college yard in Cambridge, the rooms of which were used for different college purposes incident to the duties of the professor occu-

pying it, "partly for his convenience and partly for the convenience of the plaintiff," should be exempt, because of such a use, and because by such an occupancy the purposes of the college might be assisted and furthered?

So as to a portion of a house, like No. 37 Quincy Street, built by the college upon land owned by it, in some other location, occupied by the professor and his family; can that be said to be exempt simply because of such occupation?

Is not the occupation as much in one case for the purposes of incorporation as in the other, or, in other words, is it not as much for the interests of the college, and are not the necessities of such occupation as apparent in one case as in the other? That is to say, it is apparent the professor must have a home and live somewhere, otherwise he could not transact his duties as such professor; and for the time being, and in the performance of such duties, he is occupying his residence, and in such an occupation he is, as far as the prosecution of his duties is concerned, carrying out in part the purposes for which the college was incorporated, to wit: the imparting of knowledge to the students and the increase of learning to that extent.

Such a rule of construction would be contrary to the rule above cited and cannot be sustained.

The fact that Professor Langdell occupies the house as a professor of law does not change the nature of his occupancy. He may have a number of titles, and if he did it would not affect his occupancy, which is that of a residence for himself and family, no matter by what or how many titles he may be called or known.

This differs from the case of Massachusetts General Hospital *v.* Somerville in this, that the building here is upon land taxed. In that case the land was not taxed and was exempt by reason of the manner in which it was held, and the house occupied by the person, who devoted his time exclusively to the care of the grounds not taxed, was considered by the Court as "being used as an incident only to the general purposes for which the land was held and occupied by the said person 'for reasons of convenience.'"

So in Trustees of Wesleyan Academy *v.* Wilbraham, 99 Mass. 599-603, the land upon which the building was situated was not taxed, and the question there was whether or not the use of the building by the college as a boarding house to cheapen the education of

the students took this property out of the exemption, or whether it was within the purposes for which the institution was incorporated. The latter was held.

So in the case of Mount Hermon Boys' School *v.* Gill, the distinction as made by the Court, is whether or not the use of the barn was for carrying out the purposes of the incorporation, to lessen the cost of the education of the students. In this the parties in interest to be benefited, to wit: the students, were first considered.

It would be certainly a forced construction to apply the reasoning of that case in behalf of the students to the case at issue. Nor does it appear by the Report, in any case, that the object of this use by the president and professors was to assist the student and make less the cost of his education; on the other hand, as far as one can infer, it would seem that this method of occupancy, at least, so far as to the houses occupied by the professors and the voting of their salary, fixing the same in the fall of the year at a certain sum, "and the use of the house" variously estimated in value in each case (pp. 7, 8, 9, 10, 11) was an indirect method of producing revenue to the college.

Income Derived from Property

Assuming that the assessed value upon house and land appurtenant in each case is fair, we have, in each instance, the amount saved on salaries and as an investment, as follows: —

11 Quincy Street, total value house and land $19,000, use of house $750, about 4 per cent.

16 Quincy Street, total value house and land $12,000, use of house $500, about 4 per cent.

25 Quincy Street, total value house and land $24,000, use of house $1,000, about 4 per cent.

37 Quincy Street, total value house and land $17,000, use of house $700, about 4 per cent.

38 Quincy Street, total value house and land $12,000, use of house $900, about 7 per cent.

11 Frisbie Place, total value house and land $18,000, use of house $700, about 4 per cent.

making a total revenue, on $102,000 valuation, of $4,550, nearly four and one half per cent. in the form of salaries.

Neither does the gift of the president's house for the presidents affect the kind of occupancy, *i. e.*, residential, and thus bring it within the exemption in spite of such occupancy.

17 Kirkland Street

As to No. 17 Kirkland Street, it appears that the first floor is used as a boarding house, the other floors as sleeping rooms or living rooms for students. It is in the occupation of students, not of the college, and not for educational and scientific purposes of the college.

The reasons heretofore given in regard to the other houses apply with the same force to this house and land and need not be repeated.

Conclusion

The last clause of the section of the statute under consideration provides that as to corporations formed under the general laws, no part shall be exempt where any portion of the real estate is used other than for the purposes for which the corporation was incorporated.

In the case of houses of religious worship those portions not used for such are taxed (Chap. 11, sect. 5, clause 7, Public Statutes).

The statute is silent as to such corporations as the plaintiff, in case of a use of a portion not within the exemption. The most charitable and just action would be to impose a tax upon the plaintiffs to the extent of the property owned and not occupied by them for the purposes for which the plaintiffs were incorporated. This is what the defendants have undertaken to do in the imposition of these assessments.

Therefore judgment should be entered for the defendants.

Respectfully submitted,

GILBERT A. A. PEVEY,
Attorney for the Defendants.

On January 4, 1900, *the Court rendered its decision affirming the judgment of the Superior Court. At the same time a decision was rendered in the case of Phillips Academy v. Andover, which had been*

argued before the Harvard College case. The opinion in each case was written by Mr. Justice Morton. As many of the principles, considerations, and authorities applicable to the Harvard College case are stated at length in the Phillips Academy case, and are only referred to but not restated in the Harvard College case, it will be necessary to read both opinions in order to get the full statement of the law applicable to the latter case. These opinions are as follows: —

TRUSTEES OF PHILLIPS ACADEMY *vs.* ANDOVER

Opinion

Morton, J. This case was heard on agreed facts, and the principal question is whether the property for which the plaintiffs were assessed was exempt from taxation, by virtue of Pub. St., ch. 11, sec. 5, cl. 3, as amended by Statute 1889, chap. 465 which provides that "the personal property of literary, benevolent, charitable, and scientific institutions and temperance societies, incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they are incorporated" shall be exempt from taxation. There can be no doubt that Phillips Academy is an institution within the meaning of the exempting clause and that, with perhaps a possible doubt in the case of Professor Park, the persons occupying the various houses were officers of the institution (Williams College *v.* Williamstown, 167 Mass. 505). A more difficult question is whether the property was occupied by them for the purposes for which the institution was incorporated.

It is not easy, and perhaps not possible, to define what will constitute such an occupancy under all circumstances, and we shall not attempt it; but there are some general rules and considerations which we deem it proper to state notwithstanding the disposition which is made of this case.

The occupancy referred to usually will result from the official connection of the officer with the institution and commonly will continue only so long as such connection lasts. The Legislature could have provided as it did formerly in the case of Harvard College (see Tax Act

of 1818 and prior and subsequent Tax Acts) that such occupancy of itself should exempt the estate from taxation or even that all of the real estate belonging to a favored institution should be exempt. Previous to the adoption of the Revised Statutes, this seems to have been the case,— with a qualification after a time in regard to Harvard College and Phillips Academy. The exemptions were incorporated each year in the annual tax act and the institutions exempted were described by name, except that beginning with 1801 there was in each act a general provision exempting academies established by the law of this Commonwealth. Phillips Academy came under this general provision, but by a proviso in the Act of 1821 (chap. 107, sec. 6) and in succeeding acts, it was provided (and this is the qualification referred to above) that nothing contained in the act should "prevent the Town of Andover from taxing such real estate belonging to the Corporation of Phillips Academy situate in said town as shall not be under the immediate occupation and improvement of said corporation or of any person or persons connected with said corporation, exempted from taxation by this act." The persons who were exempted from taxation that were connected or likely to be connected with Phillips Academy were ministers of the Gospel, preceptors of academies, and Latin grammar school masters. These and other personal exemptions relating to "the president, professors, tutors, librarians, and students of Harvard, Williams, and Amherst Colleges, and of all other theological, medical, and literary institutions," were repealed by Statute 1828, chap. 143. The effect of this repeal, so far as Phillips Academy was concerned, seems to have been to cause the omission from the proviso, in subsequent tax acts, of the concluding clause which had provided by implication that real estate belonging to the corporation and occupied by any person connected with it should be exempt from taxation.

By the Revised Statutes, a general rule was established which described in a single phrase the institutions to be exempted, and limited the exemption to the real estate belonging to them and "actually occupied by them or by the officers of such institutions for the purposes for which they are incorporated." (Rev. Stat. chap. 7, sec. 5, cl. 2.) This statute, with certain additions and amendments not now material, has been continued by successive reënactments to the present time. It is manifest that under the Revised Statutes and succeeding statutes, the mere fact that real estate belonging to an exempted institution

was occupied by it or by one of its officers, could not be regarded as sufficient without anything more to exempt the property from taxation, and it has not been so regarded. (Peirce *v.* Cambridge, 2 Cush. 611; Williams College *v.* Williamstown, 167 Mass. 505; Amherst College *v.* Amherst, 173 Mass. 232.) In any other view, the words "for the purposes for which they are incorporated" would be unnecessary and meaningless. The omission from subsequent statutes of the word "actually" which was in the Revised Statutes does not affect the construction. (Lynn Workingmen's Aid Association *v.* Lynn, 136 Mass. 283–285.) Whatever else therefore may be said of the occupancy it must be for the purposes for which the institution was incorporated, and this renders it necessary to inquire into the nature and character of the occupancy. If, taking all of the circumstances and all legitimate considerations into account, it can be fairly said that the purpose of the occupancy is that for which the institution was incorporated, then the property is exempt, otherwise not.

The occupancy contemplated by the statute means, we think, something more than that which results from ownership and possession on the part of the institution, or the use of the property for investment purposes. It must have or be supposed to have direct reference to the purposes for which the institution was incorporated, and must tend or be supposed to tend directly to promote them. In a sense, any occupancy on the part of the institution or its officers may be said to have reference to those purposes and to promote them. But the language of the statute imports, we think, a direct, or what is supposed to be a direct, connection between the occupation and the purposes for which the institution was incorporated, and not an indirect one. It is not enough, for instance, that an income is derived from the occupancy which is applied to carrying on the institution. (Chapel Good Shepherd *v.* Boston, 120 Mass. 212). At the same time the occupancy may be of the kind contemplated by the statute, notwithstanding that as incident to it rent is received or the pecuniary value to the officer occupying is taken into account in some other manner. (Mass. Gen. Hospital *v.* Somerville, 101 Mass. 319.) The distinction lies, it seems to us, between an occupancy which is for the private benefit and convenience of the officer, and which is so regarded by the parties, as in the ordinary case of landlord and tenant, *and an occupancy where, although necessarily to some extent the relation of landlord and tenant enters into it, the dominant or principal matter of*

consideration is the effect of the occupancy in promoting the objects of the institution in the various ways in which such occupancy may or will tend to promote them. In the former case the property would not be exempt, in the latter it would; and the fact that the institution incidentally derived some pecuniary advantage from the occupancy would not deprive the property of the exemption to which it otherwise would be entitled.

In considering whether property is occupied so as to be exempt, regard may be had amongst other things to the situation of the institution. If, for instance, it is so situated that desirable residences are not or may not be easily obtained, and those in charge of it are of opinion that such officers as the best interests of the institution and of those resorting to it require can be more easily obtained if the institution provides places for them to live in, and it does so, this may be taken into account in determining whether the occupancy is for the purposes for which the institution was incorporated. Or again, if with the best interests of the institution as an educational institution in view, and for the purpose of enhancing its advantages to students and of promoting discipline and good conduct and greater freedom of intercourse between students and professors and instructors, those in charge deem it advisable that the president and professors and others connected with the institution should occupy residences in the college yard or in proximity to the college buildings, this also may be taken into account. The dominant purpose of the occupancy under such or similar circumstances may be as truly that for which the institution was incorporated, as the occupancy of buildings for recitation purposes, or for offices, or for other like purposes would be. And the occupancy does not lose what may be termed its institutional character and purpose because as incidental to it the officers and their families are provided with homes for the use and enjoyment of which by them compensation is allowed or taken into account in some manner. In many if not most New England colleges and academies, the presence of the families of the professors and other officers has been and is regarded as beneficial to the students and as advantageous to the institution. The occupation, therefore, by them as homes of property belonging to such institutions would not necessarily be inconsistent with the spirit and intent of the exempting clause.

In considering the purpose of the occupancy, due weight is also to be given to the intentions of those in charge of the institution. The

institution can only act through agents. In Mass. Gen. Hospital *v.* Somerville, 101 Mass. 319–322, it is said that "what lands are reasonably required and what use of lands will promote the purposes for which the institution was incorporated must be determined by its officers... In the absence of anything to show abuse or otherwise to impeach their determination, it is sufficient that the lands are intended for and in fact appropriated to those purposes;" and again, later, "the presumption is in favor of their judgment and it requires something more than mere difference of opinion upon a matter of opinion especially confided to them, to overcome that presumption." Their conclusions are not final. But if consistent with other facts tending to show that the purpose of the occupancy is that for which the institution was incorporated they well may be allowed to have a controlling effect.

The question whether in any given case the property is or is not exempt is to be determined by considering all of the facts and circumstances; and the intentions and purposes of those in charge of the institution respecting the use and occupation of the property will or may have a material bearing upon the proper determination of the question.

In applying the principles thus laid down, it is clear that not only may premises used by officers as homes for themselves and their families be so occupied by such officers as to be exempt, but also dormitories and dining-halls, and boarding houses, gymnasiums, and other buildings intended primarily for and actually devoted to the use and benefit of students or those attending the institution for the purposes for which it was incorporated. The statute is not to be construed narrowly but in a fair and liberal sense and so as to promote that spirit of learning, charity, and benevolence which it has always been one of the fundamental objects of the people of this State to encourage.

We think that there is nothing in Peirce *v.* Cambridge, 2 Cush. 611; Williams College *v.* Williamstown, *supra;* and Amherst College *v.* Amherst, 173 Mass. 232, necessarily inconsistent with the views expressed above. In Peirce *v.* Cambridge, the question as stated in Williams College *v.* Williamstown, *supra*, "was whether the real estate was taxable to Peirce as tenant," etc. The decision was put on the ground that the facts were such as to create in Professor Peirce an estate as tenant for which he was taxable. Perhaps the case might

have stood equally well on the ground that the occupation appeared to be rather for the private benefit and convenience of Professor Peirce than for the purposes for which the college was incorporated; so in Williams College *v.* Williamstown the occupation was held by the majority of the Court to be for private purposes. That case stands on its own facts and was not supposed by a majority of the Court to overrule any prior cases or to change the law as it had been previously practised and understood. Amherst College *v.* Amherst followed the Williamstown case and went on the ground that it could not be held as matter of law, which was the ruling of the Superior Court, that the house was exempt, though it was intimated in the opinion that it could have been found "that the dominant purposes of the president's occupation were not private but those for which the college was incorporated." On the other hand, we think that the conclusions which we have reached are abundantly supported by Wesleyan Academy *v.* Wilbraham, 99 Mass. 599; Mass. Gen. Hospital *v.* Somerville, *supra;* Mt. Hermon Boys' School *v.* Gill, 145 Mass. 139, in this State, and State *v.* Ross, 24 N. J. L. 497, and Yale University *v.* New Haven, 42 Atl. Rep. 87. In addition to these cases, the case of Salem Lyceum *v.* Salem, 154 Mass. 14, should be referred to. The property in that case was held to be unexempt, but it was stated that "if the principal occupation is by the plaintiff for those purposes (*i. e.*, the purposes for which the plaintiff was incorporated) occasional and incidental use and occupation for other purposes might not render it liable to taxation," thus recognizing that it is or may be the dominant purpose which gives character to the occupation. As illustrating still further the effect of intention not only upon the character of the occupation, but as establishing the fact of occupancy for a purpose entitling the property to exemption, see N. E. Hospital *v.* Boston, 113 Mass. 518, and Trinity Church *v.* Boston, 118 Mass. 164. See also Rural Cemetery *v.* Co. Com., 152 Mass. 408. In this last case the petitioner, which was a cemetery corporation, was authorized to purchase additional lands to be "applied exclusively" to the objects of the corporation. It purchased land on which there was a dwelling-house and barns, and it was assessed for the land. At the time of the assessment, no burial lots had been laid out on the land so purchased. But it was held that it could not be said that the land was not devoted exclusively to the objects of the corporation, and that the exemption from taxation of the dwelling-house and barns was justified by the fact that the build-

ings and their occupation as described were necessary for the business of the corporation and the management of the cemetery, and the property was accordingly declared to be exempt. This case would seem to show that even if the occupation was required to be exclusively for the purposes for which the institution was incorporated (though we do not think it is) an occupation by an officer and his family might be regarded under some circumstances as exclusively for such purposes notwithstanding the element of private benefit. See White *v.* Bayley, 10 C. B. (N. S.) 227.

Whether the occupancy by Professor Taylor should be referred to his life estate or to his connection with the academy as professor, or whether the academy is taxable for its reversionary interest, we do not deem it necessary to consider now.

Down to this point we are all substantially agreed. But some of my brethren think that the facts are not stated with sufficient fulness to enable us to pass satisfactorily upon the subject thus far considered, and that the agreed facts should be discharged and the case sent back, so that the facts can be presented more fully. Others of my brethren and myself are inclined to construe the agreed facts somewhat liberally and to think that we can decide the case now. But with this expression we yield to the views of those of our brethren who think otherwise, and are content that the agreed facts should be discharged and the case sent back for another trial.

PRESIDENT AND FELLOWS OF HARVARD COLLEGE *vs.* ASSESSORS OF CAMBRIDGE

Opinion

Morton, J. This is an action to recover back taxes that were assessed by the defendants on certain parcels of real estate belonging to the plaintiff corporation situated in Cambridge, which the plaintiff contends were exempt from taxation under Public Statutes, Chap. 11, Section 5, Clause 3, as amended by Statute 1889, Chapter 465.

The case was heard by a Justice of the Superior Court without a jury on what are called agreed facts, but which we interpret as authorizing him to draw such inferences as he thought warranted; he held

that the property was exempt, and found for the plaintiff for the entire amount, and reported the case to this Court in such a manner as to present the question of the assessability of each of the parcels.

We think that the ruling of the Superior Court was right, and that all of the property was exempt from taxation. Many of the principles and considerations and authorities applicable to this case have been stated and referred to somewhat at length in Trustees of Phillips Academy *v.* Andover, *ante*, and we do not deem it necessary to repeat them here.

The history of Harvard College and of like institutions shows, we think, that from the beginning, dormitories and dining-halls have been furnished by the college for the use of the students, and have been regarded as devoted to college purposes. In addition to this, the effect of the decisions in Wesleyan Academy *v.* Wilbraham, 99 Mass. 599, and Mt. Hermon Boys' School *v.* Gill, 145 Mass. 139, is plainly to exempt property applied to such uses. See also Yale University *v.* New Haven, 71 Conn. 316, and State *v.* Ross, 24 N. J. L. 497. We do not think that it makes any difference in principle that the college, instead of furnishing board itself, provides a place, without rent or compensation in any form or a lease or any agreement for a fixed term, for the use of students who club together for the purpose of obtaining for themselves with the assistance of the college, food at cost. The property so used is occupied, it seems to us, for the purposes for which the college was incorporated. Many particulars are stated in the agreed facts in regard to No. 17 Kirkland Street, which is the parcel that we are now considering, which we do not think it necessary to refer to, as it seems to us plain that the property is exempt from taxation.

The history of the college and of the legislation relating to it also shows, we think, that the president's house, during the earlier years of the college at any rate, was regarded as almost, if not quite as necessary for the purposes of the institution as dormitories and dining-halls. Public money was appropriated by the General Court to build it as it had been to build the college buildings, and the occupancy of it was evidently considered as official. The present house was built with funds given expressly for the purpose of erecting a dwelling-house for the president and his successors in office, and since it was built has been occupied by them and their families. The president is required to live in Cambridge. He pays no rent or compensation for the use

and occupation of the house, and has no lease, but occupies it, if he chooses, so long as he performs the duties of president. It, with several of the other houses that were taxed, namely, Nos. 11, 25, and 37 Quincy Street, this being 17 Quincy Street, are now and were at the time of the assessment within the college grounds, and the premises are kept in order and repair, including grading, gravelling walks, fertilizing, and repairing and cleaning furnace, removal of ashes, etc., under the direction of the college superintendent of buildings and the superintendent of grounds and at the college expense. The whole lower floor, "except possibly the kitchen, is used for Class Day, Commencement and other receptions, and for many hospitalities incident to the president's functions." "The hall and drawing-room are also used for the convenience of the college and the president for meetings of the faculty and committees, for conferences with university officers and students, for calls on university business, and for the annual meetings of the Corporation at which degrees are voted." The rest of the house consists of the usual living and housekeeping rooms and chambers, and is used by the president and his family as a dwelling-house.

It seems to us that on these facts, the Judge who heard the case was justified in finding that the dominant or principal purpose of the occupancy by the president was that for which the college was incorporated. His occupation, it could be fairly said, was, so far as the University was concerned, official, as the head of the University, just as, for instance, the President occupies the White House, and not in any just sense, primarily or principally for his own private benefit.

The remaining six houses are occupied by professors, three of whom are deans, each charged with a portion of the administrative duties formerly devolving exclusively on the president. Three of the houses, as already observed, are within the college grounds. All of them are kept in order and repair at the expense of the college in the same manner and to the same extent as the house occupied by the president. The halls and drawing-rooms in all of them, except No. 37 Quincy Street, occupied by Professor Langdell, are used, partly for the convenience of the college, and partly for that of the professor, for different college uses and purposes incident to his duties as professor, chairman of committees, dean, and the like. In the case of No. 11 Quincy Street, the drawing-room and hall are used by the professor for regular college exercises during the college year. In the case of No. 16 Quincy Street, the professor is Chairman of the Freshman Advisory Com-

mittee of the Faculty of Arts and Sciences, consisting of about twenty persons, and he has a great number of interviews in his drawing-room with students and parents. In the case of 25 Quincy Street, the college in 1892 made additions and improvements at its own expense so as to make the house more convenient for the transaction of college business and the entertaining of guests on college account. The additions as well as the drawing-room and hall are used for different college purposes incident to the several duties of the occupying professor. The parts of the houses to which no reference has been made are used by the professors and their families, and consist of the usual living and housekeeping rooms and chambers. In the fall of the year when the salaries of the professors are voted, they are fixed at certain amounts "and the use of the house $750," or whatever the sum may be; "otherwise the professor pays no rent and has no other agreement for his use and occupation of the house, but uses it as such professor." We think that it was competent for the Justice who heard the case to find on these facts that the dominant consideration in regard to the occupation of the houses by the several professors had reference to the performance of their duties as officers and professors, rather than to the private benefit which they would receive in the way of homes for themselves and their families, and that he was justified in finding that the occupancy was for the purposes for which the college was incorporated.

This case is distinguishable, we think, from Williams College *v.* Williamstown, 167 Mass. 611. In the first place, there was no question in that case as to the taxation of a building used for a dormitory and dining-hall for the students. In the next place, the occupation by the professors in this case clearly lacks the exclusive character which it was held to have in that case. In the third place, no such use for college purposes is shown to have been made of the houses occupied by the professors in that case as appears in this case. In the fourth place, the sums fixed as compensation for the use of the houses in that case were paid and received as rent, and were so treated by the Court. In this case, the sums fixed for the use of the houses were allowed as part of the compensation for services as professors, thus tending to show, as said in Mass. Gen. Hospital *v.* Somerville, 101 Mass. 326, that "the occupation was one merely by reason of service" and that the value put upon the use of the house was merely "a convenient mode of adjusting the compensation . . . and not the income or fruit of an estate

granted." Lastly, this case seems to be one where the buildings are occupied "with the permission of the college, and without" the professors "having any estate therein or paying any rent therefor," in which case it was said in Peirce *v.* Cambridge, 2 Cush. 611, the property would be exempt from taxation. See also White *v.* Bayley, 10 C. B. (N. S.) 227.

The defendant relies on Third Congregational Society *v.* Springfield, 147 Mass. 396, which was a case where a parsonage was declared to be unexempt. The Court held that religious societies did not come within the clause that we have been considering, but within the seventh clause, and that the exemption was limited to houses of religious worship only. That case is not applicable to this.

We think that the judgment of the Superior Court should be affirmed.

So ordered.

EXTRACT FROM TWENTY-FIFTH ANNUAL REPORT OF THE HARVARD CO-OPERATIVE SOCIETY.

(1907)

"In completing a quarter-century of business in Cambridge, it may not be amiss to set forth, on behalf of the Society, a few facts regarding the policy and operations of the Harvard Co-operative Society and its relations to local mercantile interests in general. The Society, as a Massachusetts corporation, pays all the taxes to which such mercantile corporations are by law subjected; it enjoys no legal immunity or privilege whatsoever by virtue of its indirect connection with Harvard College. It pays to the city of Cambridge annual taxes upon an assessment of $60,000, although, when the Society began to negotiate for the purchase of "Lyceum Hall" in 1902–03, this property was assessed for only $36,000. In the conduct of its business the Co-operative Society is subject to every item or expenditure which ordinarily finds place in the expense account of any regular corporate enterprise. Throughout the academic year it maintains upon its pay-roll an average of sixty-five employees, and disburses for wages, taxes, insurance, interest, water, light, printing, expressage, and sundries, an average of well over $1000 per week, nearly all of which goes to residents of Cambridge. In addition, thousands of dollars' worth of work, such as laundering, repairing, etc., are given to local Cambridge establishments. The Board is assured that a large proportion of the Co-operative's increase in business, especially in such lines as furniture and tailoring, consists of trade which formerly went, not to stores in Cambridge, but to merchants in Boston; and that the Society has thus rendered service to the best interests of Cambridge by keeping trade within the city limits. The Co-operative Society has confined its business, moreover, strictly to such special classes of merchandise as are constantly in demand by its own members. It cannot, again, be too strongly emphasized that, with the exception of special mark-down sales to which every business house

must at times resort to clear up old stock, the Co-operative does not sell a single dollar's worth of goods except at what the management regards as a fair and adequate advance upon cost. There is no general policy of selling at cost or below cost, as the gross profits for the last fiscal year very conclusively prove. If, as is sometimes alleged, merchandise is offered for sale in the Co-operative's store at a price below that at which goods of similar quality can be bought at wholesale by local merchants, this fact can only indicate a legitimate advantage resulting from the Society's policy of buying in large quantities, for ready cash, and at favorable turns in the market.

LEGISLATION IN REGARD TO THE EXEMPTION OF COLLEGE PROPERTY FROM TAXATION.

LEGISLATION IN REGARD TO THE EXEMPTION OF COLLEGE PROPERTY FROM TAXATION.

REVISED STATUTES, 1836, CHAP. 7, SECT. 5, CL. 2.

The following property and polls shall be exempted from taxation, namely: —

Secondly. The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this Commonwealth, and such real estate belonging to such institutions, as shall actually be occupied by them, or by the officers of said institutions, for the purposes for which they were incorporated.

GENERAL STATUTES 1860, CHAP. 11, SECT. 5, CL. 3:

The following property and polls shall be exempted from taxation: —

Third. The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this commonwealth, and the real estate belonging to such institutions, occupied by them or the officers for the purposes for which they were incorporated.

ACTS OF 1874, CHAP. 375, SECT. 8.

The real and personal estate of such corporations (educational etc.) shall not be exempt from taxation in any case where part of the income or profits of their business is divided among members or stockholders, or where any portion of such estate is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes.

ACTS OF 1878, CHAP. 214, SECT. 1.

The real estate belonging to such institutions as are mentioned in the third division of section five of chapter eleven of the General Statutes, (literary, benevolent, charitable, and scientific institutions) purchased with a view of removal thereto, shall not be exempt from taxation for a longer period than two years until such removal takes place.

PUBLIC STATUTES 1882, CHAP. 11, SECT. 5, CL. 3.

The following property and polls shall be exempted from taxation:—

Third, The personal property of literary, benevolent, charitable, and scientific institutions incorporated within this commonwealth, and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated; but such real estate, when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; and the real and personal estate of such corporations formed under general laws shall not be exempt in any case where part of the income or profits of their business is divided among their members or stockholders, or where any portion of such estate is used or appropriated for other than literary, educational, benevolent, charitable, scientific, or religious purposes.

ACTS OF 1882, CHAP. 217, SECTS. 1 AND 2.

Section 1. The notice to be given by assessors under the provisions of section thirty-eight of chapter eleven of the Public Statutes shall require all persons and corporations to bring in to the assessors, within a time therein specified, not later than the first day of July in the then current year, true lists of all real and personal estate held by such persons and corporations respectively for literary, benevolent, charitable or scientific purposes on the first day of May in said year, together with statements of the amounts of all receipts and expenditures by such persons or corporations for said purposes during the year next preceding said first day of May; such lists and statements to be in such details as may be required by the tax commissioner; *provided*,

that the assessors may accept any such list and statement after the time so specified if they shall be satisfied that there was good cause for the delay; but no list or statement shall be received after the first day of August in the then current year.

Section 2. If any person or corporation wilfully omits to bring in the list and statement of real and personal estate as herein required, the estate so held shall not be exempt from taxation in the then current year under the provisions of the third clause of section five of said chapter

ACTS OF 1886, CHAP. 231.

Section five of chapter eleven of the Public Statutes is hereby amended in the third division by adding after the word "institutions" in the second line thereof, the words: — and temperance societies,— and by adding after the word "institutions" in the third line thereof, the words: — and societies.

ACTS OF 1888, CHAP. 158, SECT. 1.

The third paragraph of section five of chapter eleven of the Public Statutes as amended by chapter two hundred and thirty-one of the acts of the year eighteen hundred and eighty-six is hereby further amended so as to read as follows: — Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions and societies occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders or used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes.

ACTS OF 1889, CHAP. 465, SECT. 1.

The third division of section five of chapter eleven of the Public Statutes, as amended by chapter two hundred and thirty-one of the acts of the year eighteen hundred and eighty-six and chapter one hundred and fifty-eight of the acts of the year eighteen hundred and eighty-eight, is hereby further amended so as to read as follows:— Third, The personal property of literary, benevolent, charitable and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to such institutions occupied by them or their officers for the purposes for which they were incorporated; but such real estate when purchased by such a corporation with a view to removal thereto, shall not, prior to such removal, be exempt for a longer period than two years; but none of the real or personal estate of such corporations organized under general laws shall be exempt when any portion of the income or profits of the business of such corporations is divided among their members or stockholders or used or appropriated for other than literary, educational benevolent, charitable, scientific or religious purposes. * * * *

REVISED LAWS 1902, CHAP. 12, SECT. 5, CL. 3.

The following property and polls shall be exempted from taxation.

Third, The personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated within this commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one.

REVISED LAWS 1902, CHAP. 12, SECT. 41.

Assessors, before making an assessment, shall give seasonable notice thereof to the inhabitants of their respective cities and towns. Such notice shall be posted in one or more public places in their cities and towns or shall be given in some other sufficient manner, and shall require the inhabitants to bring to the assessors, before a date therein specified, true lists of all their polls and personal estate not exempt from taxation, and may or may not require them to include them in their real estate which is subject to taxation. It shall also require all persons and corporations, except corporations making return to the insurance commissioner as required by section nineteen of chapter one hundred and eighteen, to bring in to the assessors, before a date therein specified, which shall not be later than the first day of July then following unless the assessors, for cause shown, extend the time to the first day of August, true lists of all real and personal estate held by them, respectively, for literary, benevolent, charitable or scientific purposes on the preceding first day of May or, at the election of such corporation, on the last day of its financial year last preceding said first day of May, and to state the amount of receipts and expenditures for said purposes during the year last preceding said days. The notice shall contain the provisions of section forty-five.

BILLS AND RESOLVES PROPOSED IN BUT NOT PASSED BY THE LEGISLATURE OF MASSACHUSETTS.

1874. HOUSE NO. 427.

House of Representatives, May 28, 1874.

The Committee on Just and Equal Taxation, to whom were referred the petition of the executive committee of the Boston Liberal League for the enactment of laws securing just and equal taxation, and the petition of Phineas E. Gay and 1,150 others of Boston, and numerous other petitions, in aid of said first mentioned petition; also the Bill introduced by Mr. Whiting, of Pembroke, for the taxation of religious and charitable corporations,

Report:

That they have heard the statements, facts and arguments presented and urged in behalf of the petitioners; also the statements, facts and arguments presented and urged by numerous remonstrants; and have, so far as they have been able, duly considered the same; that they find the subject opens a wide field for inquiry and investigation, involving the consideration of a multitude of facts and the most important questions of state policy, and that a proper, careful and thorough inquiry and investigation requires more time and attention than they have been able to give, and more than can well be given by a Committee sitting only occasionally during the session of the legislature; that they are not prepared to recommend any change in the laws relating to exemptions from taxation, at this time, but, believing that the importance of the subject and its general interest to the people and taxpayers of the State, will justify the appointment of a commission, with authority to sit during the recess of the legislature, to call such witnesses and make such inquiry and investigation

as they deem proper relative to the laws relating to taxation and the exemptions therefrom, and make a full report in print to the next General Court, they recommend the passage of the accompanying Resolve.

Per order,

SAMUEL O. LAMB.

Resolve.

Authorizing the Appointment of a Commission to inquire into the expediency of revising and amending the laws of the State relating to Taxation and the exemptions therefrom.

Resolved, That the governor and council be and they are hereby authorized to appoint a commission, consisting of three suitable persons, to sit during the recess of the legislature, to inquire into the expediency of revising and amending the laws of the state relating to taxation and the exemptions therefrom, with authority to call witnesses, and to report in full, in print, to the next general court.

Minority Report.

The following bill was reported by Mr. William Whiting of Pembroke, a minority of the above-mentioned Committee on Just and Equal Taxation.

AN ACT

Concerning the Taxation of Religious, Charitable and other Societies and Corporations.

Sect. 1. That on and after the first day of January, in the year one thousand eight hundred and seventy-five, the property of musical, agricultural and educational associations, other than colleges and town schools, heretofore exempted from taxation, shall be taxed the same as other descriptions of property.

Sect. 2. The property of religious and charitable associations,

heretofore exempted from taxation, shall, except in the cases hereinafter mentioned, be taxed in the same manner as the corporations and societies named in the first section: *provided, however,* that all religious societies shall be entitled to hold property to the amount of five thousand dollars free from taxation.

SECT. 3. Religious and other societies claiming to be purely charitable in purpose and administration, shall, before the date named in the first section of this act, make to the commission hereinafter established, returns setting forth the purpose and location of such society, amount of endowment and whence derived, their annual receipts and expenditures, and the specific objects to which the latter have been devoted during the year last past, with the number and salaries of their officers.

SECT. 4. The board of state charities, together with the tax commissioner, shall constitute a commission to receive and examine the returns required in the third section of this act, and when it shall appear to their satisfaction that any society making such returns is a pure charity, they shall certify the same to the tax commissioner, and said society shall be exempt from taxation for the amount applied to charitable purposes: *provided, however,* that societies neglecting to make returns shall not benefit by the provisions of this act.

SECT. 5. The tax authorized by this act shall be assessed by the tax commissioner, and at the average rate of the state, county and town tax for the year preceding. And the basis of valuation upon which the tax shall be assessed shall be the present value of property for the same or similar purposes to which it has been applied. And the tax commissioner is hereby authorized to require from all the societies and associations affected by this act such returns as may be found necessary to the discharge of his duty. And the compensation of the commission hereby created shall be fixed by the governor and council.

SECT. 6. This act shall take effect upon its passage, and all acts and parts of acts contrary to the provisions of this act are hereby repealed.

1897. SENATE NO. 192.

AN ACT

To Exempt from Taxation certain Real Estate belonging to Literary, Benevolent, Charitable and Scientific Institutions.

SECTION 1. The exemption provided by section five of chapter eleven of the Public Statutes shall apply to such real estate belonging to any of the institutions enumerated in clause third of said section as is occupied as a residence in the town where his official work is performed by a person whose sole or principal business is that of an officer of instruction, administration or government of such institution, so long as said occupation is in whole or in part the compensation of such officer.

Nothing herein contained shall be construed to extend in any manner the exemption provided by any of the other clauses of said section.

SECT. 2. This act shall take effect upon its passage, and shall apply to the assessment of taxes for the current year.

1898. SENATE NO. 131.

AN ACT

To exempt from Taxation Certain Real Estate belonging to Literary Benevolent, Charitable and Scientific Institutions.

SECTION 1. The exemption provided by section five of chapter eleven of the Public Statutes shall apply to such real estate belonging to any of the institutions enumerated in clause third of said section as is occupied as a residence in the town where his official work is performed by a person whose sole or principle business is that of an officer of instruction, administration or government of such institution, so long as said occupation is in whole or in part the compensation of such officer.

Nothing herein contained shall be construed to extend in any manner the exemption provided by any of the other clauses of said section.

SECTION 2. This act shall take effect upon its passage, and shall apply to the assessment of taxes for the current year.

1898. HOUSE NO. 1330.

AN ACT

Relative to the Exemption from Taxation of Certain Literary, Benevolent, Charitable and Scientific Institutions.

SECTION 1. The exemption provided by section five of chapter eleven of the Public Statutes shall apply to land owned on May first, eighteen hundred and ninety-eight, by any of the institutions enumerated in clause third of said section, so long as it is occupied by such institution for the purposes for which it was incorporated; and to houses on land owned by any of said institutions on May first, eighteen hundred and ninety-eight, and occupied as residences by persons whose sole or principal business is that of officers of instruction, administration or government of such institution whenever such occupation is in whole or in part the compensation of such officers; and to halls, dormitories, and such other buildings now or hereafter erected on land of said institutions as may be occupied for the purposes for which the said institutions were incorporated.

Nothing herein contained shall be construed to affect in any manner the exemption provided by any of the other clauses of said section. Nor shall anything herein contained exempt from taxation any property taxed to any of the enumerated institutions prior to May first, eighteen hundred and ninety-four unless and until such property is occupied in accordance with the provisions of said clause third.

SECTION 2. This act shall take effect upon its passage and shall apply to the assessment of taxes for the current year.

1898. HOUSE NO 1331.

RESOLVE

To provide for the Appointment of a Commission to report upon the Relation of the Exemption of Certain Property to Local and General Taxation.

Resolved, That the Governor by and with the consent of the Council appoint a commission of three persons to obtain, collate and report facts concerning the relation of the exemption from taxation of property of literary, scientific, benevolent and charitable institutions, and of all real estate exempt by law from taxation, either in whole or in part, to local and general taxation within the Commonwealth, for the purposes of determining how the localities where such property is situated are affected by such exemptions, and to consider and report whether the amount of such exempted property should be regulated by law, and whether the tax which might have been levied thereupon should be assumed by the Commonwealth.

Such commission shall have authority to employ assistance and to send for persons and papers.

Its necessary expenses, so far as approved by the Governor and Council, together with such compensation to the members thereof as shall be determined by the Governor and Council, shall be paid from time to time from the treasury of the Commonwealth.

The report shall be made and presented to the General Court not later than January fifteenth, eighteen hundred and ninety-nine.

1899. HOUSE NO. 212.

AN ACT

Relative to the Taxation of Certain Property of Educational Institutions.

Section 1. All personal property and real estate belonging to incorporated or unincorporated educational institutions within this Commonwealth shall be subject to taxation the same as other property in the Commonwealth, excepting only such personal property and real estate of incorporated or unincorporated educational institutions within this Commonwealth as is actually and necessarily used for the sole purpose of instruction or education. All athletic fields, play-grounds, gymnasiums and libraries actually used as such in connection with such institutions, and such buildings on athletic fields and playgrounds as bathhouses

and stands which are necessary for a proper use of the same, shall be exempt from taxation.

SECTION 2. So much of Public Statutes, chapter eleven, section five, clause three, and chapter four hundred and sixty-five of acts of eighteen hundred and eighty-nine, as is inconsistent herewith, is hereby repealed.

SECTION 3. This act shall take effect on its passage.

1899. HOUSE NO. 497.

AN ACT

To limit to State Taxes the Exemption from Taxation of Properties of Literary and Scientific Institutions.

SECTION 1. The properties of literary and scientific institutions, incorporated within this Commonwealth, shall be exempt from taxation, only as to State taxes, and so much of Public Statutes, chapter eleven, section five, clause three, as is inconsistent herewith, is hereby repealed.

SECTION 2. This act shall take effect on its passage.

1900. HOUSE NO. 506.

AN ACT

To provide for the Payment by the Commonwealth of Taxes to be assessed upon Literary and Scientific Institutions.

SECTION 1. The real estate belonging to literary and scientific institutions, incorporated within this Commonwealth, occupied by them or their officers for the purposes for which they were incorporated, and exempted from taxation, under the provisions of section five of chapter eleven of the Public Statutes, and any amendments thereto, shall be assessed by the assessors of the city or town where the town is located, at its fair market value, upon the first day of May in each year; and the amount of the

tax which would, except for such exemption thereof, be assessed thereon, shall be ascertained and reported by such assessors to the tax commissioner not later than the first day of October in each year; and thereupon such amount shall be credited and paid to such city or town out of the treasury of the Commonwealth, in the manner provided by section fifty-seven of chapter thirteen of the Public Statutes.

SECTION 2. In any case in which the tax commissioner shall be of opinion that the amount so assessed upon such exempted real estate is not based upon the fair market value thereof, he may cause the same to be reassessed by himself or his deputy, and the amount of such re-assessment shall be taken and deemed to be the true assessment thereof, except as hereinafter provided.

SECTION 3. Any city or town aggrieved by the re-assessment made by the tax commissioner, under the provisions of the preceding section, may appeal therefrom to the board of appeal, established by section sixty-two of chapter thirteen, and the provisions of said section shall apply in such appeals, so far as may be applicable, and the decision of said board shall be final.

SECTION 4. This act shall take effect on the first day of April in the year nineteen hundred.

1906. SENATE NO. 106.

AN ACT

Relative to the Taxation of Certain Property of Educational Institutions.

SECTION 1. Clause three of section five, chapter twelve, Revised Laws, is hereby amended by inserting after the word "real estate" in the ninth line, the words "except as hereinafter provided," and by adding after the word "forty-one" in the nineteenth line the following: "But no real property, owned and occupied by any educational, literary or scientific institution which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories, boarding houses or the dispensing of food or meals shall be exempt from taxation," so as to read as follows: —

Third, The personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated within this Commonwealth, the real estate, except as hereinafter provided, owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one. But, no real property, owned and occupied by any educational, literary or scientific institution, which is used or appropriated, wholly or in part, for residential. commercial or mercantile purposes or for dormitories, boarding houses or for the dispensing of food or meals, shall be exempt from taxation.

Section 2. This act shall take effect upon its passage.

1906. SENATE NO. 382.

AN ACT

Relative to the Taxation of Certain Property of Educational Institutions.

Section 1. Clause three of section five, chapter twelve, Revised Laws, is hereby amended by inserting after the word "real estate," in the ninth line the words: — except as hereinafter provided,— and by adding after the word "forty-one," in the nineteenth line, the following: — But real property, owned and occupied by any college or university, or by any scientific institution authorized to grant degrees, which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories shall not be exempt from taxation,— so as to read as follows: —

Third, The personal property of literary, benevolent, charitable and scientific institutions, and of temperance societies incorporated within this Commonwealth, the real estate, except as hereinafter provided, owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one. But real property owned and occupied by any college or university, or by any scientific institution authorized to grant degrees, which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories shall not be exempt from taxation.

SECTION 2. This act shall take effect upon its passage.

1907. SENATE NO. 53.

AN ACT

To provide for the Taxation of the Real Estate of Literary and Scientific Institutions.

SECTION 1. The real estate belonging to literary and scientific institutions, incorporated within this Commonwealth, occupied by them or their officers for the purposes for which they were incorporated, and exempted from taxation, under the provisions of section five of chapter eleven of the Public Statutes, and any amendments thereto, shall be assessed by the assessors of the city or town where the town is located, at its fair market value, upon the first day of May in each year; and the amount of the tax which would, except for such exemption thereof, be assessed thereon, shall be ascertained and reported by such assessors to the tax commissioner not later than the first day of October in

each year; and thereupon such amount shall be credited and paid to such city or town out of the treasury of the Commonwealth, in the manner provided by section fifty-seven of chapter thirteen of the Public Statutes.

SECTION 2. In any case in which the tax commissioner shall be of opinion that the amount so assessed upon such exempted real estate is not based upon the fair market value thereof, he may cause the same to be re-assessed by himself or his deputy, and the amount of such re-assessment shall be taken and deemed to be the true assessment thereof, except as hereinafter provided.

SECTION 3. Any city or town aggrieved by the re-assessment made by the tax commissioner, under the provisions of the preceding section, may appeal therefrom to the board of appeal, established by section sixty-two of chapter thirteen, and the provisions of said section shall apply in such appeals, so far as may be applicable, and the decision of said board shall be final.

SECTION 4. This act shall take effect on the first day of April in the year nineteen hundred and seven.

1907. SENATE NO. 54.

AN ACT

Relative to the Taxation of Certain Property of Educational Institutions.

SECTION 1. Clause three of section five, chapter twelve, Revised Laws, is hereby amended by inserting after the word "real estate," in the ninth line, the words:— except as hereinafter provided,— and by inserting after the word "forty-one," in the nineteenth line, the words:— But real property, owned and occupied by any college or university, or by any scientific institution authorized to grant degrees, which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories, shall not be exempt from taxation,— so as to read as follows:—

Third, The personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated

within this Commonwealth, the real estate, except as hereinafter provided, owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appropriated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one. But real property owned and occupied by any college or university, or by any scientific institution authorized to grant degrees, which is used or appropriated, wholly or in part, for residential, commercial or mercantile purposes or for dormitories shall not be exempt from taxation.

SECTION 2. This act shall take effect upon its passage.

1907. SENATE NO. 224.

AN ACT

To provide for the Taxation of the Property of Literary and Scientific Institutions.

SECTION 1. The real estate of literary and scientific institutions, incorporated within this Commonwealth, owned and occupied by them or their officers for the purposes for which they are incorporated, and exempted from taxation under the provisions of clause three of section five of chapter twelve of the Revised Laws of Massachusetts and any amendments thereto, shall be assessed by the assessors of the city or town where such institution is located, at its fair market value upon the first day of May in each year; and the amount of the tax which would, except for such exemption thereof, be assessed thereon, shall be ascertained and reported by such assessors to the tax commissioner not later than the first day of October in each year; and thereupon such amount shall be credited and paid to such city or town out of the treasury of the commonwealth.

SECTION 2. In any case in which the tax commissioner shall be of the opinion that the amount so assessed upon such exempted property is not based upon the fair market value thereof, he may cause the same to be re-assessed by himself or his deputy, and the amount of such re-assessment shall be taken and deemed to be the true assessment thereof, except as hereinafter provided.

SECTION 3. Any city or town, aggrieved by the re-assessment made by the tax commissioner, under the provisions of the preceding section, may appeal therefrom to the board of appeal established by section sixty-five of chapter fourteen of said Revised Laws.

SECTION 4. This act shall take effect on the first day of April in the year nineteen hundred and seven.

1907. SENATE NO. 290.

AN ACT

Relative to the Taxation of Residential Property of Colleges and Universities.

SECTION 1. The exemption from taxation provided by clause third of section five of chapter twelve of the Revised Laws shall not extend to such real estate belonging to any college or university or scientific institution authorized to grant degrees as is occupied as a residence by an officer of instruction, administration or government of such college, university or scientific institution.

SECTION 2. This act shall take effect upon its passage.

1907. HOUSE NO. 474.

AN ACT

Relative to the Taxation of Educational Institutions.

SECTION 1. The Commonwealth shall hereafter annually pay to every city or town in which any educational institution is situated a tax upon such property of the institution as is exempt

from taxation, to the amount of one-half of the sum which would be paid in taxes by such institution to the city or town if its property were not exempt from taxation.

SECTION 2. For the purpose of the preceding section the property, upon which a tax is to be paid by the Commonwealth as aforesaid, shall be valued by the principal assessors of the city or town, or by the chairman of the board of selectmen of the town if there are no principal assessors, acting jointly with a commissioner of college taxation, who shall be appointed by the governor, with the advice and consent of the council, for a term of years, and who shall receive an annual salary of three thousand dollars, and such further sum for his traveling and other necessary expenses as the governor may fix. In case an agreement cannot be reached by the said assessors or selectmen and the said commissioner, the secretary of the state board of education shall act as an additional appraiser. In case an agreement cannot then be reached by said assessors or said selectmen and said commissioner, and said secretary, the finding of the secretary as to all matters referred to in this act shall be final and conclusive. The secretary shall serve in that capacity without compensation, except that he shall receive the amount of his traveling and other necessary expenses as approved by the governor.

SECTION 3. This act shall take effect upon its passage, and shall apply to the assessment of taxes in the current year.

1908. HOUSE NO. 125.

AN ACT

Relative to the Taxation of Real Estate hereafter Acquired in the City of Cambridge by Harvard University.

SECTION 1. Real estate hereafter acquired in the city of Cambridge by Harvard university shall be subject to taxation.

SECTION 2. This act shall take effect upon its passage.

1908. HOUSE NO. 444.

AN ACT

To provide for the Payment by the Commonwealth of Taxes on the Real Estate of Certain Institutions.

SECTION 1. The board of assessors of any city or town in which is located any real estate of a literary, benevolent, charitable or scientific institution exempted from taxation under paragraph three of section five of chapter twelve of the Revised Laws shall assess taxes thereon in the same manner as on other real estate to the Commonwealth, which shall enjoy the same rights and privileges in relation to any such assessment as an owner of real estate.

SECTION 2. The rate of taxes so assessed shall be one-half the rate assessed on other real estate in such city or town, shall be paid for the Commonwealth by the treasurer and receiver general at the same time and in the same manner as other taxes in such city or town, and shall be used by such city or town for the cost and maintenance of public schools.

SECTION 3. This act shall take effect upon its passage.

1908. HOUSE NO. 1424.

AN ACT

To provide for taxing the Real Estate of Certain Literary and Scientific Institutions.

Section five of chapter twelve of the Revised Laws is hereby amended by adding at the end thereof the following: — *provided, however*, that land hereafter acquired by an institution having authority to grant degrees shall not be exempt from taxation, nor shall buildings on such land be exempt, provided they are used in whole or in part for such purposes of the institution as may be productive of income.

1909. HOUSE NO. 114.

AN ACT

Relative to the Assessment and Taxation of College and University Property.

SECTION 1. College or university property shall be assessed in the same manner and to the same extent as if the same were private property; and parties interested shall have the same right of appeal so far as applicable as if said property were private property. In a city or town in which all said college or university property equals or exceeds in valuation one fiftieth part of the total valuation of all the taxable property in the city or town, one fifth of said college or university property shall be exempt from taxation as at present; one fifth part of said taxes on college or university property shall be payable by said college or university or colleges or universities, but the remaining three fifths of said college or university property shall be taxed to the same extent as if the same were private property; but the same shall not be levied against the said college or university property thereof, but shall be paid by the commonwealth at the local tax rate to said city or town.

SECTION 2. This act shall take effect upon its passage.

1909. HOUSE NO. 215.

AN ACT

Relative to the Taxation of Real Estate hereafter acquired in the City of Cambridge by Harvard University.

SECTION 1. Real estate hereafter acquired in the city of Cambridge by Harvard university shall be subject to taxation.

SECTION 2. This act shall take effect upon its passage.

QUESTIONS AND ANSWERS IN REGARD TO THE EXEMPTION OF COLLEGE PROPERTY FROM TAXATION

THE EXEMPTION OF COLLEGE PROPERTY FROM TAXATION.

Question. **What is the purpose of taxation?**

Answer. To pay the cost of courts of justice, police, streets, sewers, fire departments, and other public utilities, *including public education.*

Q. **What grades of schools are maintained by taxation?**

A. Kindergarten, primary, secondary, normal, and higher.

Q. **What provision does Massachusetts make for higher education?**

A. Little by direct maintenance; it supports the Massachusetts Agricultural College at Amherst, with some aid from the national government, and makes annual grants to the Massachusetts Institute of Technology and the Worcester Polytechnic Institute.

Q. **Does Massachusetts then neglect the higher education?**

A. By no means. The state has fostered higher education since the earliest colonial days. It contains the oldest, largest, and most flourishing university in the United States, the best school of technology, several of the small colleges for which New England is famous, including some of the best known colleges for women, and many excellent seminaries.

Q. **How has the state "fostered" these institutions?**

A. Often by grant of money and land in earlier times; always by exempting from taxation their personal property and all real estate used for educational purposes.

Q. **On what ground is the exemption based?**

A. On the ground that institutions of higher education, like insti-

tutions of religion and charity, perform an indispensable public service, as indispensable as police, water-works, and streets, and should therefore not be levied upon for the support of other departments of public service.

Q. **How has exemption from taxation operated to "foster" institutions of learning?**

A. Benefactors seeking the greatest possible usefulness for their gifts have seen that the whole income of educational endowments has been available for the objects they have desired to promote.

Q. **Then the lands, buildings, grants, and other gifts contributed by the Commonwealth, by towns, and by private benefactors during nearly three hundred years have been contributed on the faith of the exemption clause?**

A. Undoubtedly. To tax the present holdings of our educational institutions would do violence to that faith; and even to tax their future holdings would, by averting gifts, block that continued growth in the just expectation of which the earlier benefactions were made. If, in any case, the new burden of taxation resulted in the collapse of an institution, the beneficence of its founders would be robbed of that perpetuity which they justly regarded as one with the life of the Commonwealth.

Q. **But is it not possible that so large a part of the ordinary taxable property of the Commonwealth should fall into the hands of institutions of learning that the towns in which they were situated would find it difficult to raise enough money from other sources to meet the public needs?**

A. It may be possible, but it is not a present fact; nor does experience suggest that it ever will be.

Q. **How can this be shown?**

A. Very easily — so far as the past and present are concerned. The colleges and universities of Massachusetts have invariably caused such an increase in the value of taxable realty in their vicinity, both by promoting small trades and by creating a pleasant environment,

that the per capita value of taxable real estate is approximately the same in towns and cities that contain colleges as in those of similar population that do not; indeed, the largest variations from this rule are in favor of the college towns and cities.

Q. **Is there not, however, a sense in which the exemption of college property may be regarded as a burden on the community in which it is situated?**

A. Yes, in this sense and in no other, namely, that the tax rate of a college town or city is higher than it would be if it could *now begin* to tax the exempted property.

Q. **You admit, then, that the exemption is a burden?**

A. Far from it. The question is not how much immediate profit a community would obtain at this moment if it could tax, say $20,000,000 worth of college property; for that question might be applied with equal force to the millions of dollars lying in the United States subtreasury, to the State House in Boston, or to any other untaxable property. The question really is whether the towns and cities containing exempted educational property — property that has grown in the security of the exemption clause — are really worse off as regards their ability to pay the ordinary expenses of public service than they would be if the colleges had never been located there.

Q. **What is the evidence that they are not worse off?**

A. The tax rates in college towns are no higher than those of towns of about the same size that do not contain colleges; indeed, they are often lower. In Cambridge, for example, if one adds to the exempted area of the college three times as much land all about this exempted area, and then takes the average value of that total for taxation purposes, exempted area and all, one arrives at a higher average value of land than exists anywhere else in the city. Where is the burden? It has been a constantly recurring experience in Massachusetts that whenever a new institution of learning was to be founded towns have eagerly competed for the advantage of securing it, even offering, in some cases, a substantial money inducement.

Q. **Why is it, then, that so many people regard exemption as a burden?**

A. Simply because, as has already been stated, they see merely the advantage they would get if the exempted property were taxed *now*, and pay no attention to the fact that the property that has flourished on the faith of the exemption has increased neighboring values enough to offset the lack of revenue from the exempted district.

Q. **But if exemption is claimed on the ground of financial and other benefit conferred on the surrounding community, why would it not be equally just to exempt from taxation a factory which increases values in a town by coming into it, or a rich private citizen who so beautifies his land as to increase the value of his entire neighborhood?**

A. There is a fundamental fallacy in that question. The demonstration that the colleges impose no burden on the communities in which they exist is brought forward, *not as the original ground of the exemption, but to meet the unfounded allegation that they are a burden.* Of course, if benefiting the community were the ground of the exemption, the beneficent factory and the beneficent private citizen could both claim exemption. The distinction between the college and the factory is that the college exists for a public object, while the factory exists primarily to make money for private persons. To go back to the original question — What is the purpose of taxation? — it is agreed that the purpose of taxation is to pay the cost of the various public utilities, including education, and that the fundamental reason for exempting institutions of higher education from taxation is that they assumed that public and wholly indispensable function, and should therefore not be taxed for the maintenance of other public functions. Those who advocate the taxation of colleges rarely profess any hostility to them, on the contrary they are loud in proclaiming their belief in higher education; only, they say, the burden is more than the communities can stand. It is to meet that argument that the contrary argument is directed, showing that, on the whole, colleges are not a burden, but a source of pecuniary advantage to the towns in which they exist.

Q. **Is it not conceivable, however, that the sudden absorption by a college of a large area of taxable property would be a serious financial embarrassment to the community?**

A. Conceivable — yes — but highly improbable if experience counts for anything. Thus far it does not appear that the growth of Massachusetts colleges and their absorption of tax-paying property has proceeded any faster than the compensating improvement, and hence elevation of values, in the neighborhood.

Q. **Is it true, then, that the college towns have nothing to fear from large increases in the funds of the colleges?**

A. Nothing whatever. For example, the funds of Harvard University were increased two years ago by a gift of nearly $2,500,000, nearly half of which came from outside of Massachusetts. The income of this new fund was to be used for a specific purpose, namely, to increase the salaries of members of the teaching staff. Undoubtedly that meant a larger amount of money expended each year in Cambridge for rents, household supplies, and wages, and consequently a tendency to increase taxable values. No one can deny that in this way the new fund was a clear financial benefit to the city of Cambridge. Yet, on the theory that exempted property constitutes a burden, the burden resting on the city of Cambridge was increased by that accession of $2,500,000 to the funds of Harvard University!

Suppose the invested funds of an institution amounting to $10,000,000 should be doubled by some benefactor; what would be the effect on the town? Possibly one or two small purchases of land, but unquestionably also a large expenditure on labor and materials for new buildings, many more teachers paying rents and taxes, and many more students attracted by increased opportunities and occupying taxed dormitories and lodgings. Would any intelligent citizen seeing such a prospect of money flowing into the city desire to avert the gift on the ground that it was a burden?

Q. **Nothing has been said thus far about the services which the town or city renders the college in the form of sewers, police and fire protection, etc. As the college and its members obtain benefit from these departments of the public service, is it not reasonable that the colleges should make some direct return?**

A. The best answer to that question is that a contrary policy has prevailed in Massachusetts for nearly 300 years with no resulting burden on the college towns; and that under that policy the institu-

tions of higher education in Massachusetts — universities, colleges for men and for women, technical schools and normal schools — are unsurpassed in service rendered.

Q. **What advantages other than financial can the institutions of higher education be said to confer on the Commonwealth?**

A. That is a pertinent question; for the founders of Massachusetts were thinking little of direct pecuniary advantage when they gave of their poverty to foster the interests of learning. They placed a high moral value on education, and they knew that the happiness and well-being of a people could never be achieved if only the direct material comforts and benefits were sought after.

It is true that most of the colleges of Massachusetts serve the whole Commonwealth and the nation as well as the locality in which they are situated. It remains true, however, that they all furnish to their several localities an educational opportunity which could not otherwise be obtained. Harvard, for example, is attended by 304 students who call Cambridge their home, and 561 students who call Boston their home. *Inasmuch as each student in Harvard University pays on the average only 45% of what he costs the University, it may be stated that these 865 young men receive each year from Harvard University instruction and facilities for which an annual cash expenditure of about $150,000 is made in excess of what they pay in tuition fees.* The fact that this great advantage is shared by students coming from other cities and from other states does not change the fact that over and above what it receives from fees the University is actually paying from its endowment funds about $150,000 a year for the instruction of Cambridge and Boston students.

Q. **How does the attitude of Massachusetts toward higher education compare with that of other states?**

A. In answering this question, it is fair to judge Massachusetts not by the proposed legislation but by her actual record in fostering higher education as described above: while belonging to the minority of states in which higher education is supported by the method of private endowment, with exemption from taxation, instead of by direct public support, she has steadily declared her faith in higher education by state and local grants and has seen her schools and colleges assume

the leadership in American education. If, on the other hand, the policy of taxing college property should prevail, Massachusetts would compare unfavorably with nearly every other state in the Union. It is a matter of common knowledge that the great state universities of the West are becoming more and more important factors in higher education in the United States, and that they bid fair to surpass in numbers the older institutions in the East. Now it is generally true of the states supporting state universities that all their colleges and universities, both public and private, are exempt from taxation, while the state universities themselves are maintained directly by the public funds. Massachusetts would indeed have cause for shame if after relying on private beneficence to maintain higher education it should proceed to levy tribute on the funds sacredly devoted to that public use. If the Massachusetts method of supporting higher education by private endowments exempted from taxation were a failure, there would be some color of reason in proposing that institutions which had failed to perform their appointed tasks should no longer enjoy a discrimination based on supposed service to the community; but in view of the undisputed leadership and repeated pioneer service of Massachusetts in almost every field of education, from the lowest to the highest, a proposal to contract the income devoted to these high purposes, and that by a method sure to avert the stream of benefactions by which they live and grow, could hardly be tolerated by the intelligent and loyal citizens of the Commonwealth.

(Compiled by J. D. Greene.)

THE LAW IN OTHER STATES.

As the citizens of Massachusetts are proud of the record of the Commonwealth as a leader in education, it will be of interest to them to examine the position of higher education in a few states of the Middle West.

The law of Illinois exempts from taxation "all property of institutions of learning including the real estate on which the institutions are located not leased by such institutions or otherwise used with the view to profit." (Chapter 120, Section 2. Star and Curtis Revised Statutes.)

The law of Wisconsin exempts from taxation the lands reserved for the grounds of a chartered college or university not exceeding 40 acres. (Revised Statutes, Chapter 48, Section 1038.) Chapter 116, Laws of 1901 provides "that Lawrence University shall hold free of taxation any lands or other property acquired by donation, bequests, or purchase, and held expressly for educational purposes and for the endowment of the institution."

The law of Ohio exempts from taxation "all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning not used with the view to profit. This provision shall not extend to leasehold estates of real property held under the authority of any college or university of learning in this state."

The law of Michigan dealing with the exemption of the property of colleges and universities exempts from taxation "such real estate as shall be occupied by them for the purposes for which they were incorporated." (Section 13, Act 301, Laws of 1887.)

In addition to the aid given to higher education by means of the exemption from taxation of endowed institutions, the states above mentioned have made direct contributions out of the public funds for the support of higher education in the state universities and agricultural and mechanical colleges as follows:

AVERAGE ANNUAL APPROPRIATION FOR FIVE YEARS PRECEDING THE DATE MENTIONED IN EACH CASE:

Wisconsin	$680,906. (to 1908).
Illinois	$714,776. (to 1908).
Michigan	$780,488. (to 1907).
Ohio	$395,366. (to 1907).

INDEX.